

**INSURANCE MODIFICATIONS**

2015 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies the Insurance Code.

**Highlighted Provisions:**

This bill:

- ▶ amends definition provision;
- ▶ amends the cap on the Captive Insurance Restricted Account;
- ▶ revises provisions related to insurance holding companies, including:
  - addressing subsidiaries;
  - addressing acquisition of control of, divestiture of control of, or merger with domestic insurer;
  - providing for acquisitions involving insurers not otherwise covered;
  - modifying provisions related to registration of insurers;
  - addressing standards and management of an insurer within a holding company system;
  - addressing examination of registered insurers;
  - providing for supervisory colleges;
  - addressing confidentiality of information;
  - imposing sanctions;
  - providing for receivership;
  - providing for recovery;
  - allowing revocation, suspension, or renewal of insurers license;
  - granting rulemaking authority and authority to issue orders;
  - addressing judicial review and mandamus;
  - addressing conflicts with other laws; and
  - providing for severability;
- ▶ enacts the Own Risk and Solvency Assessment Act, including:
  - providing the scope of the chapter;

- 33           • defining terms;
- 34           • requiring a risk management framework;
- 35           • requiring own risk and solvency assessments to be conducted;
- 36           • requiring reporting;
- 37           • providing for exemptions;
- 38           • addressing confidentiality of information;
- 39           • imposing sanctions; and
- 40           • providing for severability;
- 41       ▶ modifies exemption from conversion privileges for insured former spouse;
- 42       ▶ modifies definition of "Medicare Supplement Policy";
- 43       ▶ modifies definitions related to licensing;
- 44       ▶ addresses license lapse and voluntary surrender;
- 45       ▶ amends unfair marketing practices to include the use of certain names;
- 46       ▶ addresses continuing education requirements for navigators;
- 47       ▶ requires third party administrator to maintain with the commissioner certain
- 48       information related to place of business and contact information;
- 49       ▶ addresses receiver's compliance with financial reporting requirements;
- 50       ▶ restricts subrogation rights against an insolvent insurer's insured;
- 51       ▶ modifies definition provisions related to captive insurance companies;
- 52       ▶ addresses commissioner's ability to adopt rules related to waiver or modification of
- 53       certain public notice or hearings related to captive insurance companies;
- 54       ▶ includes certificate of organization as a document used to apply for a certificate of
- 55       authority;
- 56       ▶ addresses requirements for a captive insurance company to conduct insurance
- 57       business in this state;
- 58       ▶ provides for a limited liability company being a captive insurance company;
- 59       ▶ modifies capital requirements for captive insurance companies;
- 60       ▶ repeals language related to capital stock of a captive insurance company;
- 61       ▶ addresses when a captive insurance company can provide reinsurance;
- 62       ▶ addresses conversion or merger of a captive insurance company;
- 63       ▶ provides for a sponsored cell captive insurance company;

- 64 ▶ addresses fees to be paid by a protected cell captive insurance company;
- 65 ▶ modifies requirements for sponsored captive insurance companies;
- 66 ▶ clarifies participants in sponsored captive insurance companies;
- 67 ▶ addresses reporting requirements for sponsored cell captive insurance companies;
- 68 ▶ modifies the timing of examinations;
- 69 ▶ repeals free surplus provisions related to captive insurance companies;
- 70 ▶ repeals provisions related to a captive reinsurance company;
- 71 ▶ addresses stop-loss insurance coverage standards; and
- 72 ▶ makes technical and conforming amendments.

73 **Money Appropriated in this Bill:**

74 None

75 **Other Special Clauses:**

76 This bill provides an effective date.

77 **Utah Code Sections Affected:**

78 AMENDS:

79 **31A-1-301**, as last amended by Laws of Utah 2014, Chapters 290 and 300

80 **31A-3-304 (Effective 07/01/15)**, as last amended by Laws of Utah 2014, Chapters 290  
81 and 300

82 **31A-16-103**, as last amended by Laws of Utah 2014, Chapters 290 and 300

83 **31A-16-105**, as last amended by Laws of Utah 2007, Chapter 306

84 **31A-16-106**, as last amended by Laws of Utah 2010, Chapter 324

85 **31A-16-109**, as last amended by Laws of Utah 1987, Chapter 91

86 **31A-22-612**, as last amended by Laws of Utah 2013, Chapter 319

87 **31A-22-620**, as last amended by Laws of Utah 2009, Chapter 349

88 **31A-23a-102**, as last amended by Laws of Utah 2014, Chapters 290 and 300

89 **31A-23a-113**, as last amended by Laws of Utah 2014, Chapters 290 and 300

90 **31A-23a-402**, as last amended by Laws of Utah 2013, Chapter 319

91 **31A-23b-206**, as last amended by Laws of Utah 2014, Chapters 290, 300, 425 and last  
92 amended by Coordination Clause, Laws of Utah 2014, Chapters 300, and 425

93 **31A-27a-116**, as last amended by Laws of Utah 2008, Chapter 382

94           **31A-28-213**, as last amended by Laws of Utah 2007, Chapter 309  
95           **31A-37-102**, as last amended by Laws of Utah 2008, Chapter 302  
96           **31A-37-106**, as last amended by Laws of Utah 2011, Chapter 297  
97           **31A-37-202**, as last amended by Laws of Utah 2011, Chapters 284 and 297  
98           **31A-37-204**, as last amended by Laws of Utah 2004, Chapter 312  
99           **31A-37-301**, as last amended by Laws of Utah 2011, Chapter 297  
100          **31A-37-302**, as last amended by Laws of Utah 2011, Chapter 297  
101          **31A-37-303**, as enacted by Laws of Utah 2003, Chapter 251  
102          **31A-37-306**, as last amended by Laws of Utah 2011, Chapter 297  
103          **31A-37-401**, as enacted by Laws of Utah 2003, Chapter 251  
104          **31A-37-402**, as last amended by Laws of Utah 2011, Chapter 297  
105          **31A-37-403**, as last amended by Laws of Utah 2004, Chapter 312  
106          **31A-37-404**, as enacted by Laws of Utah 2004, Chapter 312  
107          **31A-37-501**, as last amended by Laws of Utah 2014, Chapters 290 and 300  
108          **31A-37-502**, as last amended by Laws of Utah 2009, Chapter 349  
109          **31A-37-505**, as enacted by Laws of Utah 2003, Chapter 251  
110          **31A-43-301**, as last amended by Laws of Utah 2014, Chapters 290 and 300

111    ENACTS:

112          **31A-16-102.5**, Utah Code Annotated 1953  
113          **31A-16-104.5**, Utah Code Annotated 1953  
114          **31A-16-108.5**, Utah Code Annotated 1953  
115          **31A-16-112**, Utah Code Annotated 1953  
116          **31A-16-113**, Utah Code Annotated 1953  
117          **31A-16-114**, Utah Code Annotated 1953  
118          **31A-16-115**, Utah Code Annotated 1953  
119          **31A-16-116**, Utah Code Annotated 1953  
120          **31A-16-117**, Utah Code Annotated 1953  
121          **31A-16-118**, Utah Code Annotated 1953  
122          **31A-16-119**, Utah Code Annotated 1953  
123          **31A-16a-101**, Utah Code Annotated 1953  
124          **31A-16a-102**, Utah Code Annotated 1953

125        **31A-16a-103**, Utah Code Annotated 1953  
126        **31A-16a-104**, Utah Code Annotated 1953  
127        **31A-16a-105**, Utah Code Annotated 1953  
128        **31A-16a-106**, Utah Code Annotated 1953  
129        **31A-16a-107**, Utah Code Annotated 1953  
130        **31A-16a-108**, Utah Code Annotated 1953  
131        **31A-16a-109**, Utah Code Annotated 1953  
132        **31A-16a-110**, Utah Code Annotated 1953  
133        **31A-25-302.5**, Utah Code Annotated 1953

134    RENUMBERS AND AMENDS:

135        **31A-16-107.5**, (Renumbered from 31A-16-108, as enacted by Laws of Utah 1985,  
136            Chapter 242)

137    REPEALS:

138        **31A-37-205**, as last amended by Laws of Utah 2004, Chapter 312  
139        **31A-37-601**, as last amended by Laws of Utah 2011, Chapter 297  
140        **31A-37-602**, as last amended by Laws of Utah 2008, Chapters 302 and 382  
141        **31A-37-603**, as last amended by Laws of Utah 2008, Chapter 302  
142        **31A-37-604**, as enacted by Laws of Utah 2004, Chapter 312

143

144    *Be it enacted by the Legislature of the state of Utah:*

145        Section 1. Section **31A-1-301** is amended to read:

146        **31A-1-301. Definitions.**

147        As used in this title, unless otherwise specified:

148        (1) (a) "Accident and health insurance" means insurance to provide protection against  
149    economic losses resulting from:

150            (i) a medical condition including:

151            (A) a medical care expense; or

152            (B) the risk of disability;

153            (ii) accident; or

154            (iii) sickness.

- 155 (b) "Accident and health insurance":  
156 (i) includes a contract with disability contingencies including:  
157 (A) an income replacement contract;  
158 (B) a health care contract;  
159 (C) an expense reimbursement contract;  
160 (D) a credit accident and health contract;  
161 (E) a continuing care contract; and  
162 (F) a long-term care contract; and  
163 (ii) may provide:  
164 (A) hospital coverage;  
165 (B) surgical coverage;  
166 (C) medical coverage;  
167 (D) loss of income coverage;  
168 (E) prescription drug coverage;  
169 (F) dental coverage; or  
170 (G) vision coverage.  
171 (c) "Accident and health insurance" does not include workers' compensation insurance.  
172 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title  
173 63G, Chapter 3, Utah Administrative Rulemaking Act.  
174 (3) "Administrator" is defined in Subsection [~~(164)~~] (166).  
175 (4) "Adult" means an individual who has attained the age of at least 18 years.  
176 (5) "Affiliate" means a person who controls, is controlled by, or is under common  
177 control with, another person. A corporation is an affiliate of another corporation, regardless of  
178 ownership, if substantially the same group of individuals manage the corporations.  
179 (6) "Agency" means:  
180 (a) a person other than an individual, including a sole proprietorship by which an  
181 individual does business under an assumed name; and  
182 (b) an insurance organization licensed or required to be licensed under Section  
183 31A-23a-301, 31A-25-207, or 31A-26-209.  
184 (7) "Alien insurer" means an insurer domiciled outside the United States.  
185 (8) "Amendment" means an endorsement to an insurance policy or certificate.

(9) "Annuity" means an agreement to make periodical payments for a period certain or over the lifetime of one or more individuals if the making or continuance of all or some of the series of the payments, or the amount of the payment, is dependent upon the continuance of human life.

(10) "Application" means a document:

(a) (i) completed by an applicant to provide information about the risk to be insured; and

(ii) that contains information that is used by the insurer to evaluate risk and decide whether to:

(A) insure the risk under:

(I) the coverage as originally offered; or

(II) a modification of the coverage as originally offered; or

(B) decline to insure the risk; or

(b) used by the insurer to gather information from the applicant before issuance of an annuity contract.

(11) "Articles" or "articles of incorporation" means:

(a) the original articles;

(b) a special law;

(c) a charter;

(d) an amendment;

(e) restated articles;

(f) articles of merger or consolidation;

(g) a trust instrument;

(h) another constitutive document for a trust or other entity that is not a corporation;

and

(i) an amendment to an item listed in Subsections (11)(a) through (h).

(12) "Bail bond insurance" means a guarantee that a person will attend court when required, up to and including surrender of the person in execution of a sentence imposed under Subsection 77-20-7(1), as a condition to the release of that person from confinement.

(13) "Binder" is defined in Section 31A-21-102.

(14) "Blanket insurance policy" means a group policy covering a defined class of

217 persons:

218 (a) without individual underwriting or application; and

219 (b) that is determined by definition without designating each person covered.

220 (15) "Board," "board of trustees," or "board of directors" means the group of persons

221 with responsibility over, or management of, a corporation, however designated.

222 (16) "Bona fide office" means a physical office in this state:

223 (a) that is open to the public;

224 (b) that is staffed during regular business hours on regular business days; and

225 (c) at which the public may appear in person to obtain services.

226 (17) "Business entity" means:

227 (a) a corporation;

228 (b) an association;

229 (c) a partnership;

230 (d) a limited liability company;

231 (e) a limited liability partnership; or

232 (f) another legal entity.

233 (18) "Business of insurance" is defined in Subsection [~~(88)~~] (89).

234 (19) "Business plan" means the information required to be supplied to the

235 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required

236 when these subsections apply by reference under:

237 (a) Section 31A-7-201;

238 (b) Section 31A-8-205; or

239 (c) Subsection 31A-9-205(2).

240 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a

241 corporation's affairs, however designated.

242 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a

243 corporation.

244 (21) "Captive insurance company" means:

245 (a) an insurer:

246 (i) owned by another organization; and

247 (ii) whose exclusive purpose is to insure risks of the parent organization and an



- 248 affiliated company; or
- 249 (b) in the case of a group or association, an insurer:
- 250 (i) owned by the insureds; and
- 251 (ii) whose exclusive purpose is to insure risks of:
- 252 (A) a member organization;
- 253 (B) a group member; or
- 254 (C) an affiliate of:
- 255 (I) a member organization; or
- 256 (II) a group member.
- 257 (22) "Casualty insurance" means liability insurance.
- 258 (23) "Certificate" means evidence of insurance given to:
- 259 (a) an insured under a group insurance policy; or
- 260 (b) a third party.
- 261 (24) "Certificate of authority" is included within the term "license."
- 262 (25) "Claim," unless the context otherwise requires, means a request or demand on an
- 263 insurer for payment of a benefit according to the terms of an insurance policy.
- 264 (26) "Claims-made coverage" means an insurance contract or provision limiting
- 265 coverage under a policy insuring against legal liability to claims that are first made against the
- 266 insured while the policy is in force.
- 267 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
- 268 commissioner.
- 269 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
- 270 supervisory official of another jurisdiction.
- 271 (28) (a) "Continuing care insurance" means insurance that:
- 272 (i) provides board and lodging;
- 273 (ii) provides one or more of the following:
- 274 (A) a personal service;
- 275 (B) a nursing service;
- 276 (C) a medical service; or
- 277 (D) any other health-related service; and
- 278 (iii) provides the coverage described in this Subsection (28)(a) under an agreement

279 effective:

280 (A) for the life of the insured; or

281 (B) for a period in excess of one year.

282 (b) Insurance is continuing care insurance regardless of whether or not the board and  
283 lodging are provided at the same location as a service described in Subsection (28)(a)(ii).

284 (29) (a) "Control," "controlling," "controlled," or "under common control" means the  
285 direct or indirect possession of the power to direct or cause the direction of the management  
286 and policies of a person. This control may be:

287 (i) by contract;

288 (ii) by common management;

289 (iii) through the ownership of voting securities; or

290 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).

291 (b) There is no presumption that an individual holding an official position with another  
292 person controls that person solely by reason of the position.

293 (c) A person having a contract or arrangement giving control is considered to have  
294 control despite the illegality or invalidity of the contract or arrangement.

295 (d) There is a rebuttable presumption of control in a person who directly or indirectly  
296 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the  
297 voting securities of another person.

298 (30) "Controlled insurer" means a licensed insurer that is either directly or indirectly  
299 controlled by a producer.

300 (31) "Controlling person" means a person that directly or indirectly has the power to  
301 direct or cause to be directed, the management, control, or activities of a reinsurance  
302 intermediary.

303 (32) "Controlling producer" means a producer who directly or indirectly controls an  
304 insurer.

305 (33) (a) "Corporation" means an insurance corporation, except when referring to:

306 (i) a corporation doing business:

307 (A) as:

308 (I) an insurance producer;

309 (II) a surplus lines producer;

- 310 (III) a limited line producer;
- 311 (IV) a consultant;
- 312 (V) a managing general agent;
- 313 (VI) a reinsurance intermediary;
- 314 (VII) a third party administrator; or
- 315 (VIII) an adjuster; and
- 316 (B) under:
- 317 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 318 Reinsurance Intermediaries;
- 319 (II) Chapter 25, Third Party Administrators; or
- 320 (III) Chapter 26, Insurance Adjusters; or
- 321 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
- 322 Holding Companies.
- 323 (b) "Stock corporation" means a stock insurance corporation.
- 324 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 325 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations
- 326 adopted pursuant to the Health Insurance Portability and Accountability Act.
- 327 (b) "Creditable coverage" includes coverage that is offered through a public health plan
- 328 such as:
- 329 (i) the Primary Care Network Program under a Medicaid primary care network
- 330 demonstration waiver obtained subject to Section 26-18-3;
- 331 (ii) the Children's Health Insurance Program under Section 26-40-106; or
- 332 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
- 333 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.
- 334 (35) "Credit accident and health insurance" means insurance on a debtor to provide
- 335 indemnity for payments coming due on a specific loan or other credit transaction while the
- 336 debtor has a disability.
- 337 (36) (a) "Credit insurance" means insurance offered in connection with an extension of
- 338 credit that is limited to partially or wholly extinguishing that credit obligation.
- 339 (b) "Credit insurance" includes:
- 340 (i) credit accident and health insurance;

- 341 (ii) credit life insurance;  
342 (iii) credit property insurance;  
343 (iv) credit unemployment insurance;  
344 (v) guaranteed automobile protection insurance;  
345 (vi) involuntary unemployment insurance;  
346 (vii) mortgage accident and health insurance;  
347 (viii) mortgage guaranty insurance; and  
348 (ix) mortgage life insurance.
- 349 (37) "Credit life insurance" means insurance on the life of a debtor in connection with  
350 an extension of credit that pays a person if the debtor dies.
- 351 (38) "Credit property insurance" means insurance:  
352 (a) offered in connection with an extension of credit; and  
353 (b) that protects the property until the debt is paid.
- 354 (39) "Credit unemployment insurance" means insurance:  
355 (a) offered in connection with an extension of credit; and  
356 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:  
357 (i) specific loan; or  
358 (ii) credit transaction.
- 359 (40) "Creditor" means a person, including an insured, having a claim, whether:  
360 (a) matured;  
361 (b) unmatured;  
362 (c) liquidated;  
363 (d) unliquidated;  
364 (e) secured;  
365 (f) unsecured;  
366 (g) absolute;  
367 (h) fixed; or  
368 (i) contingent.
- 369 (41) (a) "Crop insurance" means insurance providing protection against damage to  
370 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,  
371 disease, or other yield-reducing conditions or perils that is:

- 372 (i) provided by the private insurance market; or  
373 (ii) subsidized by the Federal Crop Insurance Corporation.  
374 (b) "Crop insurance" includes multiperil crop insurance.
- 375 (42) (a) "Customer service representative" means a person that provides an insurance  
376 service and insurance product information:
- 377 (i) for the customer service representative's:  
378 (A) producer;  
379 (B) surplus lines producer; or  
380 (C) consultant employer; and  
381 (ii) to the customer service representative's employer's:  
382 (A) customer;  
383 (B) client; or  
384 (C) organization.
- 385 (b) A customer service representative may only operate within the scope of authority of  
386 the customer service representative's producer, surplus lines producer, or consultant employer.
- 387 (43) "Deadline" means a final date or time:  
388 (a) imposed by:  
389 (i) statute;  
390 (ii) rule; or  
391 (iii) order; and  
392 (b) by which a required filing or payment must be received by the department.
- 393 (44) "Deemer clause" means a provision under this title under which upon the  
394 occurrence of a condition precedent, the commissioner is considered to have taken a specific  
395 action. If the statute so provides, a condition precedent may be the commissioner's failure to  
396 take a specific action.
- 397 (45) "Degree of relationship" means the number of steps between two persons  
398 determined by counting the generations separating one person from a common ancestor and  
399 then counting the generations to the other person.
- 400 (46) "Department" means the Insurance Department.  
401 (47) "Director" means a member of the board of directors of a corporation.  
402 (48) "Disability" means a physiological or psychological condition that partially or

- 403 totally limits an individual's ability to:
- 404 (a) perform the duties of:
- 405 (i) that individual's occupation; or
- 406 (ii) an occupation for which the individual is reasonably suited by education, training,
- 407 or experience; or
- 408 (b) perform two or more of the following basic activities of daily living:
- 409 (i) eating;
- 410 (ii) toileting;
- 411 (iii) transferring;
- 412 (iv) bathing; or
- 413 (v) dressing.
- 414 (49) "Disability income insurance" is defined in Subsection [~~(79)~~] (80).
- 415 (50) "Domestic insurer" means an insurer organized under the laws of this state.
- 416 (51) "Domiciliary state" means the state in which an insurer:
- 417 (a) is incorporated;
- 418 (b) is organized; or
- 419 (c) in the case of an alien insurer, enters into the United States.
- 420 (52) (a) "Eligible employee" means:
- 421 (i) an employee who:
- 422 (A) works on a full-time basis; and
- 423 (B) has a normal work week of 30 or more hours; or
- 424 (ii) a person described in Subsection (52)(b).
- 425 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 426 plan of a small employer:
- 427 (i) a sole proprietor;
- 428 (ii) a partner in a partnership; or
- 429 (iii) an independent contractor.
- 430 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):
- 431 (i) an individual who works on a temporary or substitute basis for a small employer;
- 432 (ii) an employer's spouse; or
- 433 (iii) a dependent of an employer.

- 434 (53) "Employee" means an individual employed by an employer.
- 435 (54) "Employee benefits" means one or more benefits or services provided to:
- 436 (a) an employee; or
- 437 (b) a dependent of an employee.
- 438 (55) (a) "Employee welfare fund" means a fund:
- 439 (i) established or maintained, whether directly or through a trustee, by:
- 440 (A) one or more employers;
- 441 (B) one or more labor organizations; or
- 442 (C) a combination of employers and labor organizations; and
- 443 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 444 from investments of the fund:
- 445 (A) by or on behalf of an employer doing business in this state; or
- 446 (B) for the benefit of a person employed in this state.
- 447 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
- 448 revenues.
- 449 (56) "Endorsement" means a written agreement attached to a policy or certificate to
- 450 modify the policy or certificate coverage.
- 451 (57) "Enrollment date," with respect to a health benefit plan, means:
- 452 (a) the first day of coverage; or
- 453 (b) if there is a waiting period, the first day of the waiting period.
- 454 (58) "Enterprise risk" means an activity, circumstance, event, or series of events
- 455 involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
- 456 material adverse effect upon the financial condition or liquidity of the insurer or its insurance
- 457 holding company system as a whole, including anything that would cause:
- 458 (a) the insurer's risk-based capital to fall into an action or control level as set forth in
- 459 Sections 31A-17-601 through 31A-17-613; or
- 460 (b) the insurer to be in hazardous financial condition set forth in Section 31A-27a-101.
- 461 ~~[(58)]~~ (59) (a) "Escrow" means:
- 462 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,
- 463 when a person not a party to the transaction, and neither having nor acquiring an interest in the
- 464 title, performs, in accordance with the written instructions or terms of the written agreement

between the parties to the transaction, any of the following actions:

- (A) the explanation, holding, or creation of a document; or
- (B) the receipt, deposit, and disbursement of money;
- (ii) a settlement or closing involving:
  - (A) a mobile home;
  - (B) a grazing right;
  - (C) a water right; or
  - (D) other personal property authorized by the commissioner.

(b) "Escrow" does not include:

(i) the following notarial acts performed by a notary within the state:

- (A) an acknowledgment;
- (B) a copy certification;
- (C) jurat; and
- (D) an oath or affirmation;

(ii) the receipt or delivery of a document; or

(iii) the receipt of money for delivery to the escrow agent.

~~[(59)]~~ (60) "Escrow agent" means an agency title insurance producer meeting the requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an individual title insurance producer licensed with an escrow subline of authority.

~~[(60)]~~ (61) (a) "Excludes" is not exhaustive and does not mean that another thing is not also excluded.

(b) The items listed in a list using the term "excludes" are representative examples for use in interpretation of this title.

~~[(61)]~~ (62) "Exclusion" means for the purposes of accident and health insurance that an insurer does not provide insurance coverage, for whatever reason, for one of the following:

- (a) a specific physical condition;
- (b) a specific medical procedure;
- (c) a specific disease or disorder; or
- (d) a specific prescription drug or class of prescription drugs.

~~[(62)]~~ (63) "Expense reimbursement insurance" means insurance:

- (a) written to provide a payment for an expense relating to hospital confinement



496 resulting from illness or injury; and

497 (b) written:

498 (i) as a daily limit for a specific number of days in a hospital; and

499 (ii) to have a one or two day waiting period following a hospitalization.

500 [~~(63)~~] (64) "Fidelity insurance" means insurance guaranteeing the fidelity of a person

501 holding a position of public or private trust.

502 [~~(64)~~] (65) (a) "Filed" means that a filing is:

503 (i) submitted to the department as required by and in accordance with applicable

504 statute, rule, or filing order;

505 (ii) received by the department within the time period provided in applicable statute,

506 rule, or filing order; and

507 (iii) accompanied by the appropriate fee in accordance with:

508 (A) Section 31A-3-103; or

509 (B) rule.

510 (b) "Filed" does not include a filing that is rejected by the department because it is not

511 submitted in accordance with Subsection [~~(64)~~] (65)(a).

512 [~~(65)~~] (66) "Filing," when used as a noun, means an item required to be filed with the

513 department including:

514 (a) a policy;

515 (b) a rate;

516 (c) a form;

517 (d) a document;

518 (e) a plan;

519 (f) a manual;

520 (g) an application;

521 (h) a report;

522 (i) a certificate;

523 (j) an endorsement;

524 (k) an actuarial certification;

525 (l) a licensee annual statement;

526 (m) a licensee renewal application;

527 (n) an advertisement; ~~[or]~~  
528 (o) a binder; or  
529 ~~[(or)]~~ (p) an outline of coverage.  
530 ~~[(66)]~~ (67) "First party insurance" means an insurance policy or contract in which the  
531 insurer agrees to pay a claim submitted to it by the insured for the insured's losses.  
532 ~~[(67)]~~ (68) "Foreign insurer" means an insurer domiciled outside of this state, including  
533 an alien insurer.  
534 ~~[(68)]~~ (69) (a) "Form" means one of the following prepared for general use:  
535 (i) a policy;  
536 (ii) a certificate;  
537 (iii) an application;  
538 (iv) an outline of coverage; or  
539 (v) an endorsement.  
540 (b) "Form" does not include a document specially prepared for use in an individual  
541 case.  
542 ~~[(69)]~~ (70) "Franchise insurance" means an individual insurance policy provided  
543 through a mass marketing arrangement involving a defined class of persons related in some  
544 way other than through the purchase of insurance.  
545 ~~[(70)]~~ (71) "General lines of authority" include:  
546 (a) the general lines of insurance in Subsection ~~[(71)]~~ (72);  
547 (b) title insurance under one of the following sublines of authority:  
548 (i) search, including authority to act as a title marketing representative;  
549 (ii) escrow, including authority to act as a title marketing representative; and  
550 (iii) title marketing representative only;  
551 (c) surplus lines;  
552 (d) workers' compensation; and  
553 (e) another line of insurance that the commissioner considers necessary to recognize in  
554 the public interest.  
555 ~~[(71)]~~ (72) "General lines of insurance" include:  
556 (a) accident and health;  
557 (b) casualty;

- 558 (c) life;  
559 (d) personal lines;  
560 (e) property; and  
561 (f) variable contracts, including variable life and annuity.

562 ~~[(72)]~~ (73) "Group health plan" means an employee welfare benefit plan to the extent  
563 that the plan provides medical care:

- 564 (a) (i) to an employee; or  
565 (ii) to a dependent of an employee; and  
566 (b) (i) directly;  
567 (ii) through insurance reimbursement; or  
568 (iii) through another method.

569 ~~[(73)]~~ (74) (a) "Group insurance policy" means a policy covering a group of persons  
570 that is issued:

- 571 (i) to a policyholder on behalf of the group; and  
572 (ii) for the benefit of a member of the group who is selected under a procedure defined  
573 in:

- 574 (A) the policy; or  
575 (B) an agreement that is collateral to the policy.

576 (b) A group insurance policy may include a member of the policyholder's family or a  
577 dependent.

578 ~~[(74)]~~ (75) "Guaranteed automobile protection insurance" means insurance offered in  
579 connection with an extension of credit that pays the difference in amount between the  
580 insurance settlement and the balance of the loan if the insured automobile is a total loss.

581 ~~[(75)]~~ (76) (a) Except as provided in Subsection ~~[(75)]~~ (76)(b), "health benefit plan"  
582 means a policy or certificate that:

- 583 (i) provides health care insurance;  
584 (ii) provides major medical expense insurance; or  
585 (iii) is offered as a substitute for hospital or medical expense insurance, such as:  
586 (A) a hospital confinement indemnity; or  
587 (B) a limited benefit plan.

588 (b) "Health benefit plan" does not include a policy or certificate that:

- 589 (i) provides benefits solely for:  
590 (A) accident;  
591 (B) dental;  
592 (C) income replacement;  
593 (D) long-term care;  
594 (E) a Medicare supplement;  
595 (F) a specified disease;  
596 (G) vision; or  
597 (H) a short-term limited duration; or  
598 (ii) is offered and marketed as supplemental health insurance.  
599 [~~(76)~~] (77) "Health care" means any of the following intended for use in the diagnosis,  
600 treatment, mitigation, or prevention of a human ailment or impairment:  
601 (a) a professional service;  
602 (b) a personal service;  
603 (c) a facility;  
604 (d) equipment;  
605 (e) a device;  
606 (f) supplies; or  
607 (g) medicine.  
608 [~~(77)~~] (78) (a) "Health care insurance" or "health insurance" means insurance  
609 providing:  
610 (i) a health care benefit; or  
611 (ii) payment of an incurred health care expense.  
612 (b) "Health care insurance" or "health insurance" does not include accident and health  
613 insurance providing a benefit for:  
614 (i) replacement of income;  
615 (ii) short-term accident;  
616 (iii) fixed indemnity;  
617 (iv) credit accident and health;  
618 (v) supplements to liability;  
619 (vi) workers' compensation;

620 (vii) automobile medical payment;  
621 (viii) no-fault automobile;  
622 (ix) equivalent self-insurance; or  
623 (x) a type of accident and health insurance coverage that is a part of or attached to  
624 another type of policy.

625 ~~[(78)]~~ (79) "Health Insurance Portability and Accountability Act" means the Health  
626 Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as  
627 amended.

628 ~~[(79)]~~ (80) "Income replacement insurance" or "disability income insurance" means  
629 insurance written to provide payments to replace income lost from accident or sickness.

630 ~~[(80)]~~ (81) "Indemnity" means the payment of an amount to offset all or part of an  
631 insured loss.

632 ~~[(81)]~~ (82) "Independent adjuster" means an insurance adjuster required to be licensed  
633 under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

634 ~~[(82)]~~ (83) "Independently procured insurance" means insurance procured under  
635 Section 31A-15-104.

636 ~~[(83)]~~ (84) "Individual" means a natural person.

637 ~~[(84)]~~ (85) "Inland marine insurance" includes insurance covering:

- 638 (a) property in transit on or over land;  
639 (b) property in transit over water by means other than boat or ship;  
640 (c) bailee liability;  
641 (d) fixed transportation property such as bridges, electric transmission systems, radio  
642 and television transmission towers and tunnels; and  
643 (e) personal and commercial property floaters.

644 ~~[(85)]~~ (86) "Insolvency" means that:

- 645 (a) an insurer is unable to pay its debts or meet its obligations as the debts and  
646 obligations mature;  
647 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level  
648 RBC under Subsection 31A-17-601(8)(c); or  
649 (c) an insurer is determined to be hazardous under this title.

650 ~~[(86)]~~ (87) (a) "Insurance" means:

(i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons; or

(ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute that person's risk.

(b) "Insurance" includes:

(i) a risk distributing arrangement providing for compensation or replacement for damages or loss through the provision of a service or a benefit in kind;

(ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and

(iii) a plan in which the risk does not rest upon the person who makes an arrangement, but with a class of persons who have agreed to share the risk.

~~[(87)]~~ (88) "Insurance adjuster" means a person who directs or conducts the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

~~[(88)]~~ (89) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance by an organization that is or is required to be licensed under this title;

(b) providing a benefit to an employee in the event of a contingency not within the control of the employee, in which the employee is entitled to the benefit as a right, which benefit may be provided either:

(i) by a single employer or by multiple employer groups; or

(ii) through one or more trusts, associations, or other entities;

(c) providing an annuity:

(i) including an annuity issued in return for a gift; and

(ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2) and (3);

(d) providing the characteristic services of a motor club as outlined in Subsection ~~[(116)]~~ (117);

(e) providing another person with insurance;

(f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,

682 or surety, a contract or policy of title insurance;

683 (g) transacting or proposing to transact any phase of title insurance, including:

684 (i) solicitation;

685 (ii) negotiation preliminary to execution;

686 (iii) execution of a contract of title insurance;

687 (iv) insuring; and

688 (v) transacting matters subsequent to the execution of the contract and arising out of

689 the contract, including reinsurance;

690 (h) transacting or proposing a life settlement; and

691 (i) doing, or proposing to do, any business in substance equivalent to Subsections

692 ~~[(88)]~~ (89)(a) through (h) in a manner designed to evade this title.

693 ~~[(89)]~~ (90) "Insurance consultant" or "consultant" means a person who:

694 (a) advises another person about insurance needs and coverages;

695 (b) is compensated by the person advised on a basis not directly related to the insurance

696 placed; and

697 (c) except as provided in Section 31A-23a-501, is not compensated directly or

698 indirectly by an insurer or producer for advice given.

699 ~~[(90)]~~ (91) "Insurance holding company system" means a group of two or more

700 affiliated persons, at least one of whom is an insurer.

701 ~~[(91)]~~ (92) (a) "Insurance producer" or "producer" means a person licensed or required

702 to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

703 (b) (i) "Producer for the insurer" means a producer who is compensated directly or

704 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that

705 insurer.

706 (ii) "Producer for the insurer" may be referred to as an "agent."

707 (c) (i) "Producer for the insured" means a producer who:

708 (A) is compensated directly and only by an insurance customer or an insured; and

709 (B) receives no compensation directly or indirectly from an insurer for selling,

710 soliciting, or negotiating an insurance product of that insurer to an insurance customer or

711 insured.

712 (ii) "Producer for the insured" may be referred to as a "broker."

713           ~~[(92)]~~ (93) (a) "Insured" means a person to whom or for whose benefit an insurer  
714 makes a promise in an insurance policy and includes:

- 715           (i) a policyholder;
- 716           (ii) a subscriber;
- 717           (iii) a member; and
- 718           (iv) a beneficiary.

719           (b) The definition in Subsection ~~[(92)]~~ (93)(a):

- 720           (i) applies only to this title; and
- 721           (ii) does not define the meaning of this word as used in an insurance policy or  
722 certificate.

723           ~~[(93)]~~ (94) (a) "Insurer" means a person doing an insurance business as a principal  
724 including:

- 725           (i) a fraternal benefit society;
- 726           (ii) an issuer of a gift annuity other than an annuity specified in Subsections  
727 31A-22-1305(2) and (3);
- 728           (iii) a motor club;
- 729           (iv) an employee welfare plan; and
- 730           (v) a person purporting or intending to do an insurance business as a principal on that  
731 person's own account.

732           (b) "Insurer" does not include a governmental entity to the extent the governmental  
733 entity is engaged in an activity described in Section 31A-12-107.

734           ~~[(94)]~~ (95) "Interinsurance exchange" is defined in Subsection ~~[(147)]~~ (148).

735           ~~[(95)]~~ (96) "Involuntary unemployment insurance" means insurance:

- 736           (a) offered in connection with an extension of credit; and
- 737           (b) that provides indemnity if the debtor is involuntarily unemployed for payments  
738 coming due on a:

- 739           (i) specific loan; or
- 740           (ii) credit transaction.

741           ~~[(96)]~~ (97) "Large employer," in connection with a health benefit plan, means an  
742 employer who, with respect to a calendar year and to a plan year:

- 743           (a) employed an average of at least 51 eligible employees on each business day during



744 the preceding calendar year; and

745 (b) employs at least two employees on the first day of the plan year.

746 ~~[(97)]~~ (98) "Late enrollee," with respect to an employer health benefit plan, means an  
747 individual whose enrollment is a late enrollment.

748 ~~[(98)]~~ (99) "Late enrollment," with respect to an employer health benefit plan, means  
749 enrollment of an individual other than:

750 (a) on the earliest date on which coverage can become effective for the individual  
751 under the terms of the plan; or

752 (b) through special enrollment.

753 ~~[(99)]~~ (100) (a) Except for a retainer contract or legal assistance described in Section  
754 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a  
755 specified legal expense.

756 (b) "Legal expense insurance" includes an arrangement that creates a reasonable  
757 expectation of an enforceable right.

758 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,  
759 legal services incidental to other insurance coverage.

760 ~~[(100)]~~ (101) (a) "Liability insurance" means insurance against liability:

761 (i) for death, injury, or disability of a human being, or for damage to property,  
762 exclusive of the coverages under:

763 (A) Subsection ~~[(110)]~~ (111) for medical malpractice insurance;

764 (B) Subsection ~~[(138)]~~ (139) for professional liability insurance; and

765 (C) Subsection ~~[(173)]~~ (175) for workers' compensation insurance;

766 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the  
767 insured who is injured, irrespective of legal liability of the insured, when issued with or  
768 supplemental to insurance against legal liability for the death, injury, or disability of a human  
769 being, exclusive of the coverages under:

770 (A) Subsection ~~[(110)]~~ (111) for medical malpractice insurance;

771 (B) Subsection ~~[(138)]~~ (139) for professional liability insurance; and

772 (C) Subsection ~~[(173)]~~ (175) for workers' compensation insurance;

773 (iii) for loss or damage to property resulting from an accident to or explosion of a  
774 boiler, pipe, pressure container, machinery, or apparatus;

(iv) for loss or damage to property caused by:

(A) the breakage or leakage of a sprinkler, water pipe, or water container; or

(B) water entering through a leak or opening in a building; or

(v) for other loss or damage properly the subject of insurance not within another kind of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

(b) "Liability insurance" includes:

(i) vehicle liability insurance;

(ii) residential dwelling liability insurance; and

(iii) making inspection of, and issuing a certificate of inspection upon, an elevator, boiler, machinery, or apparatus of any kind when done in connection with insurance on the elevator, boiler, machinery, or apparatus.

~~[(101)]~~ (102) (a) "License" means authorization issued by the commissioner to engage in an activity that is part of or related to the insurance business.

(b) "License" includes a certificate of authority issued to an insurer.

~~[(102)]~~ (103) (a) "Life insurance" means:

(i) insurance on a human life; and

(ii) insurance pertaining to or connected with human life.

(b) The business of life insurance includes:

(i) granting a death benefit;

(ii) granting an annuity benefit;

(iii) granting an endowment benefit;

(iv) granting an additional benefit in the event of death by accident;

(v) granting an additional benefit to safeguard the policy against lapse; and

(vi) providing an optional method of settlement of proceeds.

~~[(103)]~~ (104) "Limited license" means a license that:

(a) is issued for a specific product of insurance; and

(b) limits an individual or agency to transact only for that product or insurance.

~~[(104)]~~ (105) "Limited line credit insurance" includes the following forms of insurance:

(a) credit life;

(b) credit accident and health;

806 (c) credit property;  
807 (d) credit unemployment;  
808 (e) involuntary unemployment;  
809 (f) mortgage life;  
810 (g) mortgage guaranty;  
811 (h) mortgage accident and health;  
812 (i) guaranteed automobile protection; and  
813 (j) another form of insurance offered in connection with an extension of credit that:  
814 (i) is limited to partially or wholly extinguishing the credit obligation; and  
815 (ii) the commissioner determines by rule should be designated as a form of limited line  
816 credit insurance.

817 ~~[(105)]~~ (106) "Limited line credit insurance producer" means a person who sells,  
818 solicits, or negotiates one or more forms of limited line credit insurance coverage to an  
819 individual through a master, corporate, group, or individual policy.

820 ~~[(106)]~~ (107) "Limited line insurance" includes:

821 (a) bail bond;  
822 (b) limited line credit insurance;  
823 (c) legal expense insurance;  
824 (d) motor club insurance;  
825 (e) car rental related insurance;  
826 (f) travel insurance;  
827 (g) crop insurance;  
828 (h) self-service storage insurance;  
829 (i) guaranteed asset protection waiver;  
830 (j) portable electronics insurance; and  
831 (k) another form of limited insurance that the commissioner determines by rule should  
832 be designated a form of limited line insurance.

833 ~~[(107)]~~ (108) "Limited lines authority" includes the lines of insurance listed in  
834 Subsection ~~[(106)]~~ (107).

835 ~~[(108)]~~ (109) "Limited lines producer" means a person who sells, solicits, or negotiates  
836 limited lines insurance.

837           ~~[(109)]~~ (110) (a) "Long-term care insurance" means an insurance policy or rider  
838   advertised, marketed, offered, or designated to provide coverage:  
839           (i) in a setting other than an acute care unit of a hospital;  
840           (ii) for not less than 12 consecutive months for a covered person on the basis of:  
841               (A) expenses incurred;  
842               (B) indemnity;  
843               (C) prepayment; or  
844               (D) another method;  
845           (iii) for one or more necessary or medically necessary services that are:  
846               (A) diagnostic;  
847               (B) preventative;  
848               (C) therapeutic;  
849               (D) rehabilitative;  
850               (E) maintenance; or  
851               (F) personal care; and  
852           (iv) that may be issued by:  
853               (A) an insurer;  
854               (B) a fraternal benefit society;  
855               (C) (I) a nonprofit health hospital; and  
856               (II) a medical service corporation;  
857               (D) a prepaid health plan;  
858               (E) a health maintenance organization; or  
859           (F) an entity similar to the entities described in Subsections ~~[(109)]~~ (110)(a)(iv)(A)  
860   through (E) to the extent that the entity is otherwise authorized to issue life or health care  
861   insurance.  
862           (b) "Long-term care insurance" includes:  
863           (i) any of the following that provide directly or supplement long-term care insurance:  
864               (A) a group or individual annuity or rider; or  
865               (B) a life insurance policy or rider;  
866           (ii) a policy or rider that provides for payment of benefits on the basis of:  
867               (A) cognitive impairment; or

868 (B) functional capacity; or  
869 (iii) a qualified long-term care insurance contract.  
870 (c) "Long-term care insurance" does not include:  
871 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;  
872 (ii) basic hospital expense coverage;  
873 (iii) basic medical/surgical expense coverage;  
874 (iv) hospital confinement indemnity coverage;  
875 (v) major medical expense coverage;  
876 (vi) income replacement or related asset-protection coverage;  
877 (vii) accident only coverage;  
878 (viii) coverage for a specified:  
879 (A) disease; or  
880 (B) accident;  
881 (ix) limited benefit health coverage; or  
882 (x) a life insurance policy that accelerates the death benefit to provide the option of a  
883 lump sum payment:  
884 (A) if the following are not conditioned on the receipt of long-term care:  
885 (I) benefits; or  
886 (II) eligibility; and  
887 (B) the coverage is for one or more the following qualifying events:  
888 (I) terminal illness;  
889 (II) medical conditions requiring extraordinary medical intervention; or  
890 (III) permanent institutional confinement.  
891 ~~[(110)]~~ (111) "Medical malpractice insurance" means insurance against legal liability  
892 incident to the practice and provision of a medical service other than the practice and provision  
893 of a dental service.  
894 ~~[(111)]~~ (112) "Member" means a person having membership rights in an insurance  
895 corporation.  
896 ~~[(112)]~~ (113) "Minimum capital" or "minimum required capital" means the capital that  
897 must be constantly maintained by a stock insurance corporation as required by statute.  
898 ~~[(113)]~~ (114) "Mortgage accident and health insurance" means insurance offered in

899 connection with an extension of credit that provides indemnity for payments coming due on a  
900 mortgage while the debtor has a disability.

901 ~~[(114)]~~ (115) "Mortgage guaranty insurance" means surety insurance under which a  
902 mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

903 ~~[(115)]~~ (116) "Mortgage life insurance" means insurance on the life of a debtor in  
904 connection with an extension of credit that pays if the debtor dies.

905 ~~[(116)]~~ (117) "Motor club" means a person:

906 (a) licensed under:

907 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

908 (ii) Chapter 11, Motor Clubs; or

909 (iii) Chapter 14, Foreign Insurers; and

910 (b) that promises for an advance consideration to provide for a stated period of time  
911 one or more:

912 (i) legal services under Subsection 31A-11-102(1)(b);

913 (ii) bail services under Subsection 31A-11-102(1)(c); or

914 (iii) (A) trip reimbursement;

915 (B) towing services;

916 (C) emergency road services;

917 (D) stolen automobile services;

918 (E) a combination of the services listed in Subsections ~~[(116)]~~ (117)(b)(iii)(A) through  
919 (D); or

920 (F) other services given in Subsections 31A-11-102(1)(b) through (f).

921 ~~[(117)]~~ (118) "Mutual" means a mutual insurance corporation.

922 ~~[(118)]~~ (119) "Network plan" means health care insurance:

923 (a) that is issued by an insurer; and

924 (b) under which the financing and delivery of medical care is provided, in whole or in  
925 part, through a defined set of providers under contract with the insurer, including the financing  
926 and delivery of an item paid for as medical care.

927 ~~[(119)]~~ (120) "Nonparticipating" means a plan of insurance under which the insured is  
928 not entitled to receive a dividend representing a share of the surplus of the insurer.

929 ~~[(120)]~~ (121) "Ocean marine insurance" means insurance against loss of or damage to:

- 930 (a) ships or hulls of ships;
- 931 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,
- 932 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
- 933 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;
- 934 (c) earnings such as freight, passage money, commissions, or profits derived from
- 935 transporting goods or people upon or across the oceans or inland waterways; or
- 936 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
- 937 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
- 938 in connection with maritime activity.
- 939 ~~[(121)]~~ (122) "Order" means an order of the commissioner.
- 940 ~~[(122)]~~ (123) "Outline of coverage" means a summary that explains an accident and
- 941 health insurance policy.
- 942 ~~[(123)]~~ (124) "Participating" means a plan of insurance under which the insured is
- 943 entitled to receive a dividend representing a share of the surplus of the insurer.
- 944 ~~[(124)]~~ (125) "Participation," as used in a health benefit plan, means a requirement
- 945 relating to the minimum percentage of eligible employees that must be enrolled in relation to
- 946 the total number of eligible employees of an employer reduced by each eligible employee who
- 947 voluntarily declines coverage under the plan because the employee:
- 948 (a) has other group health care insurance coverage; or
- 949 (b) receives:
- 950 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
- 951 Security Amendments of 1965; or
- 952 (ii) another government health benefit.
- 953 ~~[(125)]~~ (126) "Person" includes:
- 954 (a) an individual;
- 955 (b) a partnership;
- 956 (c) a corporation;
- 957 (d) an incorporated or unincorporated association;
- 958 (e) a joint stock company;
- 959 (f) a trust;
- 960 (g) a limited liability company;

- 961 (h) a reciprocal;
- 962 (i) a syndicate; or
- 963 (j) another similar entity or combination of entities acting in concert.
- 964 [~~(126)~~] (127) "Personal lines insurance" means property and casualty insurance
- 965 coverage sold for primarily noncommercial purposes to:
- 966 (a) an individual; or
- 967 (b) a family.
- 968 [~~(127)~~] (128) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 969 [~~(128)~~] (129) "Plan year" means:
- 970 (a) the year that is designated as the plan year in:
- 971 (i) the plan document of a group health plan; or
- 972 (ii) a summary plan description of a group health plan;
- 973 (b) if the plan document or summary plan description does not designate a plan year or
- 974 there is no plan document or summary plan description:
- 975 (i) the year used to determine deductibles or limits;
- 976 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
- 977 or
- 978 (iii) the employer's taxable year if:
- 979 (A) the plan does not impose deductibles or limits on a yearly basis; and
- 980 (B) (I) the plan is not insured; or
- 981 (II) the insurance policy is not renewed on an annual basis; or
- 982 (c) in a case not described in Subsection [~~(128)~~] (129)(a) or (b), the calendar year.
- 983 [~~(129)~~] (130) (a) "Policy" means a document, including an attached endorsement or
- 984 application that:
- 985 (i) purports to be an enforceable contract; and
- 986 (ii) memorializes in writing some or all of the terms of an insurance contract.
- 987 (b) "Policy" includes a service contract issued by:
- 988 (i) a motor club under Chapter 11, Motor Clubs;
- 989 (ii) a service contract provided under Chapter 6a, Service Contracts; and
- 990 (iii) a corporation licensed under:
- 991 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or



(B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

(c) "Policy" does not include:

(i) a certificate under a group insurance contract; or

(ii) a document that does not purport to have legal effect.

~~(130)~~ (131) "Policyholder" means a person who controls a policy, binder, or oral contract by ownership, premium payment, or otherwise.

~~(131)~~ (132) "Policy illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years.

~~(132)~~ (133) "Policy summary" means a synopsis describing the elements of a life insurance policy.

~~(133)~~ (134) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations and guidance.

~~(134)~~ (135) "Preexisting condition," with respect to a health benefit plan:

(a) means a condition that was present before the effective date of coverage, whether or not medical advice, diagnosis, care, or treatment was recommended or received before that day; and

(b) does not include a condition indicated by genetic information unless an actual diagnosis of the condition by a physician has been made.

~~(135)~~ (136) (a) "Premium" means the monetary consideration for an insurance policy.

(b) "Premium" includes, however designated:

(i) an assessment;

(ii) a membership fee;

(iii) a required contribution; or

(iv) monetary consideration.

(c) (i) "Premium" does not include consideration paid to a third party administrator for the third party administrator's services.

(ii) "Premium" includes an amount paid by a third party administrator to an insurer for insurance on the risks administered by the third party administrator.

~~(136)~~ (137) "Principal officers" for a corporation means the officers designated under Subsection 31A-5-203(3).

1023           ~~[(137)]~~ (138) "Proceeding" includes an action or special statutory proceeding.

1024           ~~[(138)]~~ (139) "Professional liability insurance" means insurance against legal liability

1025 incident to the practice of a profession and provision of a professional service.

1026           ~~[(139)]~~ (140) (a) Except as provided in Subsection ~~[(139)]~~ (140)(b), "property

1027 insurance" means insurance against loss or damage to real or personal property of every kind

1028 and any interest in that property:

1029           (i) from all hazards or causes; and

1030           (ii) against loss consequential upon the loss or damage including vehicle

1031 comprehensive and vehicle physical damage coverages.

1032           (b) "Property insurance" does not include:

1033           (i) inland marine insurance; and

1034           (ii) ocean marine insurance.

1035           ~~[(140)]~~ (141) "Qualified long-term care insurance contract" or "federally tax qualified

1036 long-term care insurance contract" means:

1037           (a) an individual or group insurance contract that meets the requirements of Section

1038 7702B(b), Internal Revenue Code; or

1039           (b) the portion of a life insurance contract that provides long-term care insurance:

1040           (i) (A) by rider; or

1041           (B) as a part of the contract; and

1042           (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue

1043 Code.

1044           ~~[(141)]~~ (142) "Qualified United States financial institution" means an institution that:

1045           (a) is:

1046           (i) organized under the laws of the United States or any state; or

1047           (ii) in the case of a United States office of a foreign banking organization, licensed

1048 under the laws of the United States or any state;

1049           (b) is regulated, supervised, and examined by a United States federal or state authority

1050 having regulatory authority over a bank or trust company; and

1051           (c) meets the standards of financial condition and standing that are considered

1052 necessary and appropriate to regulate the quality of a financial institution whose letters of credit

1053 will be acceptable to the commissioner as determined by:

1054 (i) the commissioner by rule; or  
1055 (ii) the Securities Valuation Office of the National Association of Insurance  
1056 Commissioners.

1057 ~~[(142)]~~ (143) (a) "Rate" means:  
1058 (i) the cost of a given unit of insurance; or  
1059 (ii) for property or casualty insurance, that cost of insurance per exposure unit either  
1060 expressed as:  
1061 (A) a single number; or  
1062 (B) a pure premium rate, adjusted before the application of individual risk variations  
1063 based on loss or expense considerations to account for the treatment of:  
1064 (I) expenses;  
1065 (II) profit; and  
1066 (III) individual insurer variation in loss experience.  
1067 (b) "Rate" does not include a minimum premium.

1068 ~~[(143)]~~ (144) (a) Except as provided in Subsection ~~[(143)]~~ (144)(b), "rate service  
1069 organization" means a person who assists an insurer in rate making or filing by:  
1070 (i) collecting, compiling, and furnishing loss or expense statistics;  
1071 (ii) recommending, making, or filing rates or supplementary rate information; or  
1072 (iii) advising about rate questions, except as an attorney giving legal advice.  
1073 (b) "Rate service organization" does not mean:  
1074 (i) an employee of an insurer;  
1075 (ii) a single insurer or group of insurers under common control;  
1076 (iii) a joint underwriting group; or  
1077 (iv) an individual serving as an actuarial or legal consultant.

1078 ~~[(144)]~~ (145) "Rating manual" means any of the following used to determine initial and  
1079 renewal policy premiums:  
1080 (a) a manual of rates;  
1081 (b) a classification;  
1082 (c) a rate-related underwriting rule; and  
1083 (d) a rating formula that describes steps, policies, and procedures for determining  
1084 initial and renewal policy premiums.

1085            [~~(145)~~] (146) (a) "Rebate" means a licensee paying, allowing, giving, or offering to  
1086 pay, allow, or give, directly or indirectly:

- 1087            (i) a refund of premium or portion of premium;  
1088            (ii) a refund of commission or portion of commission;  
1089            (iii) a refund of all or a portion of a consultant fee; or  
1090            (iv) providing services or other benefits not specified in an insurance or annuity  
1091 contract.

1092            (b) "Rebate" does not include:

- 1093            (i) a refund due to termination or changes in coverage;  
1094            (ii) a refund due to overcharges made in error by the licensee; or  
1095            (iii) savings or wellness benefits as provided in the contract by the licensee.

1096            [~~(146)~~] (147) "Received by the department" means:

- 1097            (a) the date delivered to and stamped received by the department, if delivered in  
1098 person;  
1099            (b) the post mark date, if delivered by mail;  
1100            (c) the delivery service's post mark or pickup date, if delivered by a delivery service;  
1101            (d) the received date recorded on an item delivered, if delivered by:  
1102            (i) facsimile;  
1103            (ii) email; or  
1104            (iii) another electronic method; or  
1105            (e) a date specified in:  
1106            (i) a statute;  
1107            (ii) a rule; or  
1108            (iii) an order.

1109            [~~(147)~~] (148) "Reciprocal" or "interinsurance exchange" means an unincorporated  
1110 association of persons:

- 1111            (a) operating through an attorney-in-fact common to all of the persons; and  
1112            (b) exchanging insurance contracts with one another that provide insurance coverage  
1113 on each other.

1114            [~~(148)~~] (149) "Reinsurance" means an insurance transaction where an insurer, for  
1115 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to

1116 reinsurance transactions, this title sometimes refers to:

1117 (a) the insurer transferring the risk as the "ceding insurer"; and

1118 (b) the insurer assuming the risk as the:

1119 (i) "assuming insurer"; or

1120 (ii) "assuming reinsurer."

1121 [~~(149)~~] (150) "Reinsurer" means a person licensed in this state as an insurer with the  
1122 authority to assume reinsurance.

1123 [~~(150)~~] (151) "Residential dwelling liability insurance" means insurance against  
1124 liability resulting from or incident to the ownership, maintenance, or use of a residential  
1125 dwelling that is a detached single family residence or multifamily residence up to four units.

1126 [~~(151)~~] (152) (a) "Retrocession" means reinsurance with another insurer of a liability  
1127 assumed under a reinsurance contract.

1128 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a  
1129 liability assumed under a reinsurance contract.

1130 [~~(152)~~] (153) "Rider" means an endorsement to:

1131 (a) an insurance policy; or

1132 (b) an insurance certificate.

1133 [~~(153)~~] (154) (a) "Security" means a:

1134 (i) note;

1135 (ii) stock;

1136 (iii) bond;

1137 (iv) debenture;

1138 (v) evidence of indebtedness;

1139 (vi) certificate of interest or participation in a profit-sharing agreement;

1140 (vii) collateral-trust certificate;

1141 (viii) preorganization certificate or subscription;

1142 (ix) transferable share;

1143 (x) investment contract;

1144 (xi) voting trust certificate;

1145 (xii) certificate of deposit for a security;

1146 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in

1147 payments out of production under such a title or lease;  
1148 (xiv) commodity contract or commodity option;  
1149 (xv) certificate of interest or participation in, temporary or interim certificate for,  
1150 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed  
1151 in Subsections [~~(153)~~] (154)(a)(i) through (xiv); or  
1152 (xvi) another interest or instrument commonly known as a security.  
1153 (b) "Security" does not include:  
1154 (i) any of the following under which an insurance company promises to pay money in a  
1155 specific lump sum or periodically for life or some other specified period:  
1156 (A) insurance;  
1157 (B) an endowment policy; or  
1158 (C) an annuity contract; or  
1159 (ii) a burial certificate or burial contract.  
1160 (155) "Securityholder" means a specified person who owns a security of that person,  
1161 including:  
1162 (a) common stock;  
1163 (b) preferred stock;  
1164 (c) debt obligations; and  
1165 (d) any other security convertible into or evidencing the right of any of the items listed  
1166 in this Subsection (155).  
1167 [~~(154)~~] (156) "Secondary medical condition" means a complication related to an  
1168 exclusion from coverage in accident and health insurance.  
1169 [~~(155)~~] (157) (a) "Self-insurance" means an arrangement under which a person  
1170 provides for spreading its own risks by a systematic plan.  
1171 (b) Except as provided in this Subsection [~~(155)~~] (157), "self-insurance" does not  
1172 include an arrangement under which a number of persons spread their risks among themselves.  
1173 (c) "Self-insurance" includes:  
1174 (i) an arrangement by which a governmental entity undertakes to indemnify an  
1175 employee for liability arising out of the employee's employment; and  
1176 (ii) an arrangement by which a person with a managed program of self-insurance and  
1177 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or

1178 employees for liability or risk that is related to the relationship or employment.

1179 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1180 ~~[(156)]~~ (158) "Sell" means to exchange a contract of insurance:

1181 (a) by any means;

1182 (b) for money or its equivalent; and

1183 (c) on behalf of an insurance company.

1184 ~~[(157)]~~ (159) "Short-term care insurance" means an insurance policy or rider

1185 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care

1186 insurance, but that provides coverage for less than 12 consecutive months for each covered

1187 person.

1188 ~~[(158)]~~ (160) "Significant break in coverage" means a period of 63 consecutive days

1189 during each of which an individual does not have creditable coverage.

1190 ~~[(159)]~~ (161) "Small employer" means, in connection with a health benefit plan and

1191 with respect to a calendar year and to a plan year, an employer who:

1192 (a) employed at least one employee but not more than an average of 50 eligible

1193 employees on business days during the preceding calendar year; and

1194 (b) employs at least one employee on the first day of the plan year.

1195 ~~[(160)]~~ (162) "Special enrollment period," in connection with a health benefit plan, has

1196 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance

1197 Portability and Accountability Act.

1198 ~~[(161)]~~ (163) (a) "Subsidiary" of a person means an affiliate controlled by that person

1199 either directly or indirectly through one or more affiliates or intermediaries.

1200 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting

1201 shares are owned by that person either alone or with its affiliates, except for the minimum

1202 number of shares the law of the subsidiary's domicile requires to be owned by directors or

1203 others.

1204 ~~[(162)]~~ (164) Subject to Subsection ~~[(86)]~~ (87)(b), "surety insurance" includes:

1205 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or

1206 perform the principal's obligations to a creditor or other obligee;

1207 (b) bail bond insurance; and

1208 (c) fidelity insurance.

1209           ~~[(163)]~~ (165) (a) "Surplus" means the excess of assets over the sum of paid-in capital  
1210 and liabilities.

1211           (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is  
1212 designated by the insurer or organization as permanent.

1213           (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require  
1214 that insurers or organizations doing business in this state maintain specified minimum levels of  
1215 permanent surplus.

1216           (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the  
1217 same as the minimum required capital requirement that applies to stock insurers.

1218           (c) "Excess surplus" means:

1219           (i) for a life insurer, accident and health insurer, health organization, or property and  
1220 casualty insurer as defined in Section 31A-17-601, the lesser of:

1221           (A) that amount of an insurer's or health organization's total adjusted capital that  
1222 exceeds the product of:

1223           (I) 2.5; and

1224           (II) the sum of the insurer's or health organization's minimum capital or permanent  
1225 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1226           (B) that amount of an insurer's or health organization's total adjusted capital that  
1227 exceeds the product of:

1228           (I) 3.0; and

1229           (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1230           (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer  
1231 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1232           (A) 1.5; and

1233           (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1234           ~~[(164)]~~ (166) "Third party administrator" or "administrator" means a person who  
1235 collects charges or premiums from, or who, for consideration, adjusts or settles claims of  
1236 residents of the state in connection with insurance coverage, annuities, or service insurance  
1237 coverage, except:

1238           (a) a union on behalf of its members;

1239           (b) a person administering a:



1240 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
1241 1974;

1242 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1243 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1244 (c) an employer on behalf of the employer's employees or the employees of one or  
1245 more of the subsidiary or affiliated corporations of the employer;

1246 (d) an insurer licensed under the following, but only for a line of insurance for which  
1247 the insurer holds a license in this state:

1248 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1249 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;

1250 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1251 (iv) Chapter 9, Insurance Fraternal; or

1252 (v) Chapter 14, Foreign Insurers;

1253 (e) a person:

1254 (i) licensed or exempt from licensing under:

1255 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and  
1256 Reinsurance Intermediaries; or

1257 (B) Chapter 26, Insurance Adjusters; and

1258 (ii) whose activities are limited to those authorized under the license the person holds  
1259 or for which the person is exempt; or

1260 (f) an institution, bank, or financial institution:

1261 (i) that is:

1262 (A) an institution whose deposits and accounts are to any extent insured by a federal  
1263 deposit insurance agency, including the Federal Deposit Insurance Corporation or National  
1264 Credit Union Administration; or

1265 (B) a bank or other financial institution that is subject to supervision or examination by  
1266 a federal or state banking authority; and

1267 (ii) that does not adjust claims without a third party administrator license.

1268 ~~[(165)]~~ (167) "Title insurance" means the insuring, guaranteeing, or indemnifying of an  
1269 owner of real or personal property or the holder of liens or encumbrances on that property, or  
1270 others interested in the property against loss or damage suffered by reason of liens or

1271 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity  
1272 or unenforceability of any liens or encumbrances on the property.

1273 ~~[(166)]~~ (168) "Total adjusted capital" means the sum of an insurer's or health  
1274 organization's statutory capital and surplus as determined in accordance with:

1275 (a) the statutory accounting applicable to the annual financial statements required to be  
1276 filed under Section 31A-4-113; and

1277 (b) another item provided by the RBC instructions, as RBC instructions is defined in  
1278 Section 31A-17-601.

1279 ~~[(167)]~~ (169) (a) "Trustee" means "director" when referring to the board of directors of  
1280 a corporation.

1281 (b) "Trustee," when used in reference to an employee welfare fund, means an  
1282 individual, firm, association, organization, joint stock company, or corporation, whether acting  
1283 individually or jointly and whether designated by that name or any other, that is charged with  
1284 or has the overall management of an employee welfare fund.

1285 ~~[(168)]~~ (170) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted  
1286 insurer" means an insurer:

1287 (i) not holding a valid certificate of authority to do an insurance business in this state;  
1288 or

1289 (ii) transacting business not authorized by a valid certificate.

1290 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1291 (i) holding a valid certificate of authority to do an insurance business in this state; and

1292 (ii) transacting business as authorized by a valid certificate.

1293 ~~[(169)]~~ (171) "Underwrite" means the authority to accept or reject risk on behalf of the  
1294 insurer.

1295 ~~[(170)]~~ (172) "Vehicle liability insurance" means insurance against liability resulting  
1296 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a  
1297 vehicle comprehensive or vehicle physical damage coverage under Subsection ~~[(139)]~~ (140).

1298 ~~[(171)]~~ (173) "Voting security" means a security with voting rights, and includes a  
1299 security convertible into a security with a voting right associated with the security.

1300 ~~[(172)]~~ (174) "Waiting period" for a health benefit plan means the period that must  
1301 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of

1302 the health benefit plan, can become effective.

1303 [~~(173)~~] (175) "Workers' compensation insurance" means:

1304 (a) insurance for indemnification of an employer against liability for compensation  
1305 based on:

1306 (i) a compensable accidental injury; and

1307 (ii) occupational disease disability;

1308 (b) employer's liability insurance incidental to workers' compensation insurance and  
1309 written in connection with workers' compensation insurance; and

1310 (c) insurance assuring to a person entitled to workers' compensation benefits the  
1311 compensation provided by law.

1312 Section 2. Section **31A-3-304 (Effective 07/01/15)** is amended to read:

1313 **31A-3-304 (Effective 07/01/15). Annual fees -- Other taxes or fees prohibited --**  
1314 **Captive Insurance Restricted Account.**

1315 (1) (a) A captive insurance company shall pay an annual fee imposed under this section  
1316 to obtain or renew a certificate of authority.

1317 (b) The commissioner shall:

1318 (i) determine the annual fee pursuant to Section 31A-3-103; and

1319 (ii) consider whether the annual fee is competitive with fees imposed by other states on  
1320 captive insurance companies.

1321 (2) A captive insurance company that fails to pay the fee required by this section is  
1322 subject to the relevant sanctions of this title.

1323 (3) (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter  
1324 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under  
1325 the laws of this state that may be levied or assessed on a captive insurance company:

1326 (i) a fee under this section;

1327 (ii) a fee under Chapter 37, Captive Insurance Companies Act; and

1328 (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company  
1329 Act.

1330 (b) The state or a county, city, or town within the state may not levy or collect an  
1331 occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii)  
1332 against a captive insurance company.

1333 (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115  
1334 against a captive insurance company.

1335 (d) A captive insurance company is subject to real and personal property taxes.

1336 (4) A captive insurance company shall pay the fee imposed by this section to the  
1337 commissioner by June 1 of each year.

1338 (5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be  
1339 deposited into the Captive Insurance Restricted Account.

1340 (b) There is created in the General Fund a restricted account known as the "Captive  
1341 Insurance Restricted Account."

1342 (c) The Captive Insurance Restricted Account shall consist of the fees described in  
1343 Subsection (3)(a).

1344 (d) The commissioner shall administer the Captive Insurance Restricted Account.  
1345 Subject to appropriations by the Legislature, the commissioner shall use the money deposited  
1346 into the Captive Insurance Restricted Account to:

1347 (i) administer and enforce:

1348 (A) Chapter 37, Captive Insurance Companies Act; and

1349 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

1350 (ii) promote the captive insurance industry in Utah.

1351 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,  
1352 except that at the end of each fiscal year, money received by the commissioner in excess of  
1353 [~~\$1,250,000~~] \$1,850,000 shall be treated as free revenue in the General Fund.

1354 Section 3. Section **31A-16-102.5** is enacted to read:

1355 **31A-16-102.5. Subsidiaries of insurers.**

1356 (1) (a) A domestic insurer may organize or acquire one or more subsidiaries either:

1357 (i) by itself; or

1358 (ii) in cooperation with one or more persons.

1359 (b) A subsidiary of a domestic insurer may conduct any kind of business or businesses  
1360 and its authority to do so may not be limited by reason of the fact that it is a subsidiary of a  
1361 domestic insurer.

1362 (2) (a) In addition to investments in common stock, preferred stock, debt obligations,  
1363 and other securities permitted under all other sections of this chapter, a domestic insurer may

1364 also invest in the following securities of one or more subsidiaries:

1365 (i) common stock;

1366 (ii) preferred stock;

1367 (iii) debt obligations; or

1368 (iv) other securities.

1369 (b) Amounts under Subsection (2)(a) that do not exceed the lesser of 10% of the  
1370 insurer's assets or 50% of the insurer's surplus as regards policyholders are permitted, if after  
1371 the investments, the insurer's surplus as regards policyholders will be reasonable in relation to  
1372 the insurer's outstanding liabilities and adequate to meet its financial needs.

1373 (c) In calculating the amount of the investments described in Subsection (2)(b),  
1374 investments in domestic or foreign insurance subsidiaries and health organizations shall be  
1375 excluded, and there shall be included:

1376 (i) total net money or other consideration expended and obligations assumed in the  
1377 acquisition or formation of a subsidiary, including all organizational expenses and  
1378 contributions to capital and surplus of the subsidiary whether or not represented by the  
1379 purchase of capital stock or issuance of other securities; and

1380 (ii) the amounts expended in acquiring additional common stock, preferred stock, debt  
1381 obligations, and other securities, and all contributions to the capital or surplus of a subsidiary  
1382 subsequent to its acquisition or formation.

1383 (d) (i) A domestic insurer may invest any amount in securities described in Subsection  
1384 (2)(a) of one or more subsidiaries engaged or organized to engage exclusively in the ownership  
1385 and management of assets authorized as investments for the insurer if each subsidiary agrees to  
1386 limit its investments in any asset so that the investments will not cause the amount of the total  
1387 investment of the insurer to exceed any of the investment limitations specified in Subsection  
1388 (2)(b) applicable to the insurer.

1389 (ii) For purpose of this Subsection (2)(d), "the total investment of the insurer" shall  
1390 include:

1391 (A) a direct investment by the insurer in an asset; and

1392 (B) the insurer's proportionate share of an investment in an asset by a subsidiary of the  
1393 insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by  
1394 the percentage of the ownership of the subsidiary.

(e) With the approval of the commissioner, a domestic insurer may invest any greater amount in securities described in Subsection (2)(a) provided that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(3) Investments in securities described in Subsection (2)(a) may not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to the investments of insurers.

(4) Whether any investment made pursuant to Subsection (2) meets the applicable requirements of Subsection (2) shall be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account:

(a) the then outstanding principal balance on all previous investments in debt obligations; and

(b) the value of all previous investments in equity securities as of the day they were made net of any return of capital invested not including dividends.

(5) (a) Subject to Subsection (5)(b), if an insurer ceases to control a subsidiary, it shall dispose of any investment in the subsidiary made pursuant to this section:

(i) within three years from the time of the cessation of control; or

(ii) within such further time as the commissioner may prescribe.

(b) Subsection (5)(a) does not apply if at any time after the investment is made, the investment meets the requirements for investment under any other section of this chapter, and the insurer has so notified the commissioner.

Section 4. Section **31A-16-103** is amended to read:

**31A-16-103. Acquisition of control of, divestiture of control of, or merger with domestic insurer.**

(1) (a) A person may not take the actions described in Subsections (1)(b) or (c) unless, at the time any offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of securities if no offer or agreement is involved:

(i) the person files with the commissioner a statement containing the information required by this section;

(ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the

insurer; and

(iii) the commissioner approves the offer, request, invitation, agreement, or acquisition.

(b) Unless the person complies with Subsection (1)(a), a person other than the issuer may not make a tender offer for, a request or invitation for tenders of, or enter into any agreement to exchange securities, or seek to acquire or acquire in the open market or otherwise, any voting security of a domestic insurer if after the acquisition, the person would directly, indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.

(c) Unless the person complies with Subsection (1)(a), a person may not enter into an agreement to merge with or otherwise to acquire control of:

(i) a domestic insurer; or

(ii) any person controlling a domestic insurer.

(d) For purposes of this section, a controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days before the cessation of control. The commissioner shall determine those instances in which the one or more persons seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in the commissioner's discretion determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Subsection (1)(a) is otherwise filed, this Subsection (1)(d) does not apply.

(e) With respect to a transaction subject to this section, the acquiring person shall also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 31A-16-104.5. A failure to file the notification may be subject to penalties specified in Section 31A-16-104.5.

~~(f)~~ (f) (i) For purposes of this section, a domestic insurer includes any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(ii) The controlling person described in Subsection (1)~~(f)~~(f)(i) shall file with the commissioner a preacquisition notification containing the information required in Subsection

1457 (2) 30 calendar days before the proposed effective date of the acquisition.  
1458 (iii) For the purposes of this section, "person" does not include any securities broker  
1459 that in the usual and customary brokers function holds less than 20% of:  
1460 (A) the voting securities of an insurance company; or  
1461 (B) any person that controls an insurance company.  
1462 (iv) This section applies to all domestic insurers and other entities licensed under  
1463 ~~[Chapters 5, 7, 8, 9, and 11.]:~~  
1464 (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;  
1465 (B) Chapter 7, Nonprofit Health Service Insurance Corporations;  
1466 (C) Chapter 8, Health Maintenance Organizations and Limited Health Plans;  
1467 (D) Chapter 9, Insurance Fraternal; and  
1468 (E) Chapter 11, Motor Clubs.  
1469 ~~(f)~~ (g) (i) An agreement for acquisition of control or merger as contemplated by this  
1470 Subsection (1) is not valid or enforceable unless the agreement:  
1471 (A) is in writing; and  
1472 (B) includes a provision that the agreement is subject to the approval of the  
1473 commissioner upon the filing of any applicable statement required under this chapter.  
1474 (ii) A written agreement for acquisition or control that includes the provision described  
1475 in Subsection (1)~~(f)~~(g)(i) satisfies the requirements of this Subsection (1).  
1476 (2) The statement to be filed with the commissioner under Subsection (1) shall be  
1477 made under oath or affirmation and shall contain the following information:  
1478 (a) the name and address of the "acquiring party," which means each person by whom  
1479 or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to  
1480 be effected; and  
1481 (i) if the person is an individual:  
1482 (A) the person's principal occupation;  
1483 (B) a listing of all offices and positions held by the person during the past five years;  
1484 and  
1485 (C) any conviction of crimes other than minor traffic violations during the past 10  
1486 years; and  
1487 (ii) if the person is not an individual:



1488 (A) a report of the nature of its business operations during:  
1489 (I) the past five years; or  
1490 (II) for any lesser period as the person and any of its predecessors has been in  
1491 existence;  
1492 (B) an informative description of the business intended to be done by the person and  
1493 the person's subsidiaries;  
1494 (C) a list of all individuals who are or who have been selected to become directors or  
1495 executive officers of the person, or individuals who perform, or who will perform functions  
1496 appropriate to such positions; and  
1497 (D) for each individual described in Subsection (2)(a)(ii)(C), the information required  
1498 by Subsection (2)(a)(i) for each individual;  
1499 (b) (i) the source, nature, and amount of the consideration used or to be used in  
1500 effecting the merger or acquisition of control;  
1501 (ii) a description of any transaction in which funds were or are to be obtained for the  
1502 purpose of effecting the merger or acquisition of control, including any pledge of:  
1503 (A) the insurer's stock; or  
1504 (B) the stock of any of the insurer's subsidiaries or controlling affiliates; and  
1505 (iii) the identity of persons furnishing the consideration;  
1506 (c) (i) fully audited financial information, or other financial information considered  
1507 acceptable by the commissioner, of the earnings and financial condition of each acquiring party  
1508 for:  
1509 (A) the preceding five fiscal years of each acquiring party; or  
1510 (B) any lesser period the acquiring party and any of its predecessors shall have been in  
1511 existence; and  
1512 (ii) unaudited information:  
1513 (A) similar to the information described in Subsection (2)(c)(i); and  
1514 (B) prepared within the 90 days prior to the filing of the statement;  
1515 (d) any plans or proposals which each acquiring party may have to:  
1516 (i) liquidate the insurer;  
1517 (ii) sell its assets;  
1518 (iii) merge or consolidate the insurer with any person; or

1519 (iv) make any other material change in the insurer's:  
1520 (A) business;  
1521 (B) corporate structure; or  
1522 (C) management;  
1523 (e) (i) the number of shares of any security referred to in Subsection (1) that each  
1524 acquiring party proposes to acquire;  
1525 (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in  
1526 Subsection (1); and  
1527 (iii) a statement as to the method by which the fairness of the proposal was arrived at;  
1528 (f) the amount of each class of any security referred to in Subsection (1) that:  
1529 (i) is beneficially owned; or  
1530 (ii) concerning which there is a right to acquire beneficial ownership by each acquiring  
1531 party;  
1532 (g) a full description of any contract, arrangement, or understanding with respect to any  
1533 security referred to in Subsection (1) in which any acquiring party is involved, including:  
1534 (i) the transfer of any of the securities;  
1535 (ii) joint ventures;  
1536 (iii) loan or option arrangements;  
1537 (iv) puts or calls;  
1538 (v) guarantees of loans;  
1539 (vi) guarantees against loss or guarantees of profits;  
1540 (vii) division of losses or profits; or  
1541 (viii) the giving or withholding of proxies;  
1542 (h) a description of the purchase by any acquiring party of any security referred to in  
1543 Subsection (1) during the 12 calendar months preceding the filing of the statement including:  
1544 (i) the dates of purchase;  
1545 (ii) the names of the purchasers; and  
1546 (iii) the consideration paid or agreed to be paid for the purchase;  
1547 (i) a description of:  
1548 (i) any recommendations to purchase by any acquiring party any security referred to in  
1549 Subsection (1) made during the 12 calendar months preceding the filing of the statement; or

1550 (ii) any recommendations made by anyone based upon interviews or at the suggestion  
1551 of the acquiring party;

1552 (j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange  
1553 offers for, and agreements to acquire or exchange any securities referred to in Subsection (1);  
1554 and

1555 (ii) if distributed, copies of additional soliciting material relating to the transactions  
1556 described in Subsection (2)(j)(i);

1557 (k) (i) the term of any agreement, contract, or understanding made with, or proposed to  
1558 be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for  
1559 tender; and

1560 (ii) the amount of any fees, commissions, or other compensation to be paid to  
1561 broker-dealers with regard to any agreement, contract, or understanding described in  
1562 Subsection (2)(k)(i); [~~and~~]

1563 (l) an agreement by the person required to file the statement referred to in Subsection  
1564 (1) that it will provide the annual report, specified in Section 31A-16-105, for so long as  
1565 control exists;

1566 (m) an acknowledgment by the person required to file the statement referred to in  
1567 Subsection (1) that the person and all subsidiaries within its control in the insurance holding  
1568 company system will provide information to the commissioner upon request as necessary to  
1569 evaluate enterprise risk to the insurer; and

1570 [~~(n)~~] (n) any additional information the commissioner requires by rule, which the  
1571 commissioner determines to be:

1572 (i) necessary or appropriate for the protection of policyholders of the insurer; or  
1573 (ii) in the public interest.

1574 (3) The department may request:

1575 (a) (i) criminal background information maintained pursuant to Title 53, Chapter 10,  
1576 Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and  
1577 (ii) complete Federal Bureau of Investigation criminal background checks through the  
1578 national criminal history system.

1579 (b) Information obtained by the department from the review of criminal history records  
1580 received under Subsection (3)(a) shall be used by the department for the purpose of:

1581 (i) verifying the information in Subsection (2)(a)(i);  
1582 (ii) determining the integrity of persons who would control the operation of an insurer;  
1583 and  
1584 (iii) preventing persons who violate 18 U.S.C. Sec. 1033 from engaging in the business  
1585 of insurance in the state.

1586 (c) If the department requests the criminal background information, the department  
1587 shall:

1588 (i) pay to the Department of Public Safety the costs incurred by the Department of  
1589 Public Safety in providing the department criminal background information under Subsection  
1590 (3)(a)(i);

1591 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau  
1592 of Investigation in providing the department criminal background information under  
1593 Subsection (3)(a)(ii); and

1594 (iii) charge the person required to file the statement referred to in Subsection (1) a fee  
1595 equal to the aggregate of Subsections (3)(c)(i) and (ii).

1596 (4) (a) If the source of the consideration under Subsection (2)(b)(i) is a loan made in  
1597 the lender's ordinary course of business, the identity of the lender shall remain confidential, if  
1598 the person filing the statement so requests.

1599 (b) (i) Under Subsection (2)(e), the commissioner may require a statement of the  
1600 adjusted book value assigned by the acquiring party to each security in arriving at the terms of  
1601 the offer.

1602 (ii) For purposes of this Subsection (4)(b), "adjusted book value" means each security's  
1603 proportional interest in the capital and surplus of the insurer with adjustments that reflect:

1604 (A) market conditions;  
1605 (B) business in force; and  
1606 (C) other intangible assets or liabilities of the insurer.

1607 (c) The description required by Subsection (2)(g) shall identify the persons with whom  
1608 the contracts, arrangements, or understandings have been entered into.

1609 (5) (a) If the person required to file the statement referred to in Subsection (1) is a  
1610 partnership, limited partnership, syndicate, or other group, the commissioner may require that  
1611 all the information called for by Subsections (2), (3), or (4) shall be given with respect to each:

- 1612 (i) partner of the partnership or limited partnership;  
1613 (ii) member of the syndicate or group; and  
1614 (iii) person who controls the partner or member.
- 1615 (b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation,  
1616 or if the person required to file the statement referred to in Subsection (1) is a corporation, the  
1617 commissioner may require that the information called for by Subsection (2) shall be given with  
1618 respect to:
- 1619 (i) the corporation;  
1620 (ii) each officer and director of the corporation; and  
1621 (iii) each person who is directly or indirectly the beneficial owner of more than 10% of  
1622 the outstanding voting securities of the corporation.
- 1623 (6) If any material change occurs in the facts set forth in the statement filed with the  
1624 commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth  
1625 the change, together with copies of all documents and other material relevant to the change,  
1626 shall be filed with the commissioner and sent to the insurer within two business days after the  
1627 filing person learns of such change.
- 1628 (7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection  
1629 (1) is proposed to be made by means of a registration statement under the Securities Act of  
1630 1933, or under circumstances requiring the disclosure of similar information under the  
1631 Securities Exchange Act of 1934, or under a state law requiring similar registration or  
1632 disclosure, a person required to file the statement referred to in Subsection (1) may use copies  
1633 of any registration or disclosure documents in furnishing the information called for by the  
1634 statement.
- 1635 (8) (a) The commissioner shall approve any merger or other acquisition of control  
1636 referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, the  
1637 commissioner finds that:
- 1638 (i) after the change of control, the domestic insurer referred to in Subsection (1) would  
1639 not be able to satisfy the requirements for the issuance of a license to write the line or lines of  
1640 insurance for which it is presently licensed;
- 1641 (ii) the effect of the merger or other acquisition of control would:
- 1642 (A) substantially lessen competition in insurance in this state; or

1643 (B) tend to create a monopoly in insurance;  
1644 (iii) the financial condition of any acquiring party might:  
1645 (A) jeopardize the financial stability of the insurer; or  
1646 (B) prejudice the interest of:  
1647 (I) its policyholders; or  
1648 (II) any remaining securityholders who are unaffiliated with the acquiring party;  
1649 (iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in  
1650 Subsection (1) are unfair and unreasonable to the securityholders of the insurer;  
1651 (v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its  
1652 assets, or consolidate or merge it with any person, or to make any other material change in its  
1653 business or corporate structure or management, are:  
1654 (A) unfair and unreasonable to policyholders of the insurer; and  
1655 (B) not in the public interest; or  
1656 (vi) the competence, experience, and integrity of those persons who would control the  
1657 operation of the insurer are such that it would not be in the interest of the policyholders of the  
1658 insurer and the public to permit the merger or other acquisition of control.  
1659 (b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not  
1660 be considered unfair if the adjusted book values under Subsection (2)(e):  
1661 (i) are disclosed to the securityholders; and  
1662 (ii) determined by the commissioner to be reasonable.  
1663 (9) (a) The public hearing referred to in Subsection (8) shall be held within 30 days  
1664 after the statement required by Subsection (1) is filed.  
1665 (b) (i) At least 20 days notice of the hearing shall be given by the commissioner to the  
1666 person filing the statement.  
1667 (ii) Affected parties may waive the notice required by this Subsection (9)(b).  
1668 (iii) Not less than seven days notice of the public hearing shall be given by the person  
1669 filing the statement to:  
1670 (A) the insurer; and  
1671 (B) any person designated by the commissioner.  
1672 (c) The commissioner shall make a determination within 30 days after the conclusion  
1673 of the hearing.

(d) At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected by the hearing may:

- (i) present evidence;
- (ii) examine and cross-examine witnesses; and
- (iii) offer oral and written arguments.

(e) (i) A person or insurer described in Subsection (9)(d) may conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state.

(ii) All discovery proceedings shall be concluded not later than three days before the commencement of the public hearing.

(10) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Subsection (9)(a) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection (1). The person shall file the statement referred to in Subsection (1) with the National Association of Insurance Commissioners within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in Subsection (1). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend a hearing under this Subsection (10), in person or by telecommunication.

(11) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than 60 days after the date of notification of the change in control submitted pursuant to Subsection (1).

~~(10)~~ (12) (a) The commissioner may retain technical experts to assist in reviewing all, or a portion of, information filed in connection with a proposed merger or other acquisition of control referred to in Subsection (1).

(b) In determining whether any of the conditions in Subsection (8) exist, the commissioner may consider the findings of technical experts employed to review applicable

1705 filings.

1706 (c) (i) A technical expert employed under Subsection [~~(10)~~] (12)(a) shall present to the  
1707 commissioner a statement of all expenses incurred by the technical expert in conjunction with  
1708 the technical expert's review of a proposed merger or other acquisition of control.

1709 (ii) At the commissioner's direction the acquiring person shall compensate the technical  
1710 expert at customary rates for time and expenses:

1711 (A) necessarily incurred; and

1712 (B) approved by the commissioner.

1713 (iii) The acquiring person shall:

1714 (A) certify the consolidated account of all charges and expenses incurred for the review  
1715 by technical experts;

1716 (B) retain a copy of the consolidated account described in Subsection [~~(10)~~]  
1717 (12)(c)(iii)(A); and

1718 (C) file with the department as a public record a copy of the consolidated account  
1719 described in Subsection [~~(10)~~] (12)(c)(iii)(A).

1720 [~~(11)~~] (13) (a) (i) If a domestic insurer proposes to merge into another insurer, any  
1721 securityholder electing to exercise a right of dissent may file with the insurer a written request  
1722 for payment of the adjusted book value given in the statement required by Subsection (1) and  
1723 approved under Subsection (8), in return for the surrender of the security holder's securities.

1724 (ii) The request described in Subsection [~~(11)~~] (13)(a)(i) shall be filed not later than 10  
1725 days after the day of the securityholders' meeting where the corporate action is approved.

1726 (b) The dissenting securityholder is entitled to and the insurer is required to pay to the  
1727 dissenting securityholder the specified value within 60 days of receipt of the dissenting security  
1728 holder's security.

1729 (c) Persons electing under this Subsection [~~(11)~~] (13) to receive cash for their securities  
1730 waive the dissenting shareholder and appraisal rights otherwise applicable under Title 16,  
1731 Chapter 10a, Part 13, Dissenters' Rights.

1732 (d) (i) This Subsection [~~(11)~~] (13) provides an elective procedure for dissenting  
1733 securityholders to resolve their objections to the plan of merger.

1734 (ii) This section does not restrict the rights of dissenting securityholders under Title 16,  
1735 Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this



1736 Subsection [~~(11)~~] (13).

1737 [~~(12)~~] (14) (a) All statements, amendments, or other material filed under Subsection  
1738 (1), and all notices of public hearings held under Subsection (8), shall be mailed by the insurer  
1739 to its securityholders within five business days after the insurer has received the statements,  
1740 amendments, other material, or notices.

1741 (b) (i) Mailing expenses shall be paid by the person making the filing.

1742 (ii) As security for the payment of mailing expenses, that person shall file with the  
1743 commissioner an acceptable bond or other deposit in an amount determined by the  
1744 commissioner.

1745 [~~(13)~~] (15) This section does not apply to any offer, request, invitation, agreement, or  
1746 acquisition that the commissioner by order exempts from the requirements of this section as:

1747 (a) not having been made or entered into for the purpose of, and not having the effect  
1748 of, changing or influencing the control of a domestic insurer; or

1749 (b) otherwise not comprehended within the purposes of this section.

1750 [~~(14)~~] (16) The following are violations of this section:

1751 (a) the failure to file any statement, amendment, or other material required to be filed  
1752 pursuant to Subsections (1), (2), and (5); or

1753 (b) the effectuation, or any attempt to effectuate, an acquisition of control of,  
1754 divestiture of, or merger with a domestic insurer unless the commissioner has given the  
1755 commissioner's approval to the acquisition or merger.

1756 [~~(15)~~] (17) (a) The courts of this state are vested with jurisdiction over:

1757 (i) a person who:

1758 (A) files a statement with the commissioner under this section; and

1759 (B) is not resident, domiciled, or authorized to do business in this state; and

1760 (ii) overall actions involving persons described in Subsection [~~(15)~~] (17)(a)(i) arising  
1761 out of a violation of this section.

1762 (b) A person described in Subsection [~~(15)~~] (17)(a) is considered to have performed  
1763 acts equivalent to and constituting an appointment of the commissioner by that person, to be  
1764 that person's lawful agent upon whom may be served all lawful process in any action, suit, or  
1765 proceeding arising out of a violation of this section.

1766 (c) A copy of a lawful process described in Subsection [~~(15)~~] (17)(b) shall be:

(i) served on the commissioner; and  
(ii) transmitted by registered or certified mail by the commissioner to the person at that person's last-known address.

Section 5. Section **31A-16-104.5** is enacted to read:

**31A-16-104.5. Acquisitions involving insurers not otherwise covered.**

(1) The following definitions apply for the purposes of this section only:

(a) "Acquisition" means an agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

(b) "Insurer" includes any company or group of companies under common management, ownership or control.

(c) "Involved insurer" includes an insurer that either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(d) (i) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state.

(ii) Notwithstanding Subsection (1)(d)(i), for purposes of Subsection (2)(b), "market" means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

(2) (a) This section applies to any acquisition in which there is a change in control of an insurer authorized to do business in Utah.

(b) This section does not apply to the following:

(i) securities purchased solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state;

(ii) if a purchase of securities results in a presumption of control under Subsection 31A-1-301(29)(d), it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(iii) the acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with Subsection (3)(a) 30 days before the proposed effective date of the acquisition;

(iv) the acquisition of an already affiliated person;

(v) an acquisition if, as an immediate result of the acquisition:

(A) in no market would the combined market share of the involved insurers exceed 5% of the total market;

(B) there would be no increase in any market share; or

(C) in no market would the combined market share of the involved insurers exceeds 12% of the total market, and the market share increase by more than 2% of the total market;

(vi) an acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; or

(vii) an acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition:

(A) there is a lack of feasible alternative to improving such condition;

(B) the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and

(C) the findings are communicated by the domiciliary commissioner to the commissioner of this state.

(3) An acquisition covered by Subsection (2) may be subject to an order pursuant to Subsection (5) unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this Subsection (3) in the same manner as provided in Section 31A-16-109.

(a) The pre-acquisition notification shall be in the form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets that, under Subsection (2)(b)(iv), cause the acquisition not to be exempted from this section. The commissioner may require additional material and information as considered necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Subsection (4). The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of the economist indicating the economist's ability to render an informed opinion.

(b) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of receipt, or termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

(4) (a) The commissioner may enter an order under Subsection (5)(a) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state, tend to create a monopoly, or if the insurer fails to file adequate information in compliance with this section.

(b) In determining whether a proposed acquisition would violate the competitive standard of Subsection (4)(a), the commissioner shall consider the following:

(i) Any acquisition covered under this Subsection (4) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards if:

(A) the market is highly concentrated and the involved insurers possess the following shares of the market:

<u>Insurer A</u>	<u>Insurer B</u>
<u>4%</u>	<u>4% or more</u>
<u>10%</u>	<u>2% or more</u>
<u>15%</u>	<u>1% or more; or</u>

1860 (B) the market is not highly concentrated and the involved insurers possess the  
 1861 following shares of the market:

1862	<u>Insurer A</u>	<u>Insurer B</u>
1863	<u>5%</u>	<u>5% or more</u>
1864	<u>10%</u>	<u>4% or more</u>
1865	<u>15%</u>	<u>3% or more</u>
1866	<u>19%</u>	<u>1% or more</u>

1867 (ii) For purposes of this section, a highly concentrated market is one in which the share  
 1868 of the 4 largest insurers is 75% or more of the market. Percentages not shown in the tables are  
 1869 interpolated proportionately to the percentages that are shown. If more than two insurers are  
 1870 involved, exceeding the total of the two columns in the table is prima facie evidence of  
 1871 violation of the competitive standard in Subsection (4)(a).

1872 (iii) For purposes of this section, the insurer with the largest share of the market shall  
 1873 be considered to be Insurer A.

1874 (c) There is a significant trend toward increased concentration when the aggregate  
 1875 market share of any grouping of the largest insurers in the market, from the 2 largest to the 8  
 1876 largest, has increased by 7% or more of the market over a period of time extending from any  
 1877 base year 5 to 10 years before the acquisition up to the time of the acquisition. Any acquisition  
 1878 or merger covered under Subsection (1) involving 2 or more insurers competing in the same  
 1879 market is prima facie evidence of violation of the competitive standard in Subsection (4)(a) if:

1880 (i) there is a significant trend toward increased concentration in the market;

1881 (ii) 1 of the insurers involved is 1 of the insurers in a grouping of large insurers  
 1882 showing the requisite increase in the market share; and

1883 (iii) another involved insurer's market is 2% or more.

1884 (d) The burden of showing prima facie evidence of violation of the competitive  
 1885 standard rests upon the commissioner.

1886 (e) Even though an acquisition is not prima facie violative of the competitive standard  
 1887 under Subsections (4)(b) and (4)(c), the commissioner may establish the requisite  
 1888 anticompetitive effect based upon other substantial evidence.

1889 (f) Even though an acquisition is prima facie violative of the competitive standard

under Subsections (4)(b) and (4)(c), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this Subsection (4)(f) include the following:

(i) market shares;

(ii) volatility of ranking of market leaders;

(iii) number of competitors;

(iv) concentration or trend of concentration in the industry; and

(v) ease of entry and exit into the market.

(g) An order may not be entered under Subsection (5) if:

(i) the acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition; or

(ii) the acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.

(5) (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if an acquisition violates the standards of this section, the commissioner may enter an order:

(i) requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(ii) denying the application of an acquired or acquiring insurer for a license to do business in this state.

(b) The commissioner shall accompany an order issued under this Subsection (5) with a written decision of the commissioner setting forth findings of fact and conclusions of law.

(c) An order pursuant to this section may not apply if the acquisition is not consummated.

(d) A person who violates a cease and desist order of the commissioner under Subsection (5)(a)(i) and while the order is in effect may after notice and hearing and upon order of the commissioner be subject at the discretion of the commissioner to one or more of the following:

(i) notwithstanding Section 31A-2-308, a monetary penalty of not more than \$10,000

1921 for every day of violation; or

1922 (ii) suspension or revocation of the person's license.

1923 (f) An insurer or other person who fails to make any filing required by this section, and  
1924 who fails to demonstrate a good faith effort to comply with a filing requirement, is subject to a  
1925 fine of not more than \$50,000 notwithstanding Section 31A-2-308.

1926 Section 6. Section **31A-16-105** is amended to read:

1927 **31A-16-105. Registration of insurers.**

1928 (1) (a) [~~Every~~] An insurer [~~which~~] that is authorized to do business in this state and  
1929 [~~which~~] that is a member of an insurance holding company system shall register with the  
1930 commissioner, except a foreign insurer subject to registration requirements and standards  
1931 adopted by statute or regulation in the jurisdiction of its domicile, if the requirements and  
1932 standards are substantially similar to those contained in this section, Subsections  
1933 31A-16-106(1)(a) and (2) and either Subsection 31A-16-106(1)(b) or a statutory provision  
1934 similar to the following: "Each registered insurer shall keep current the information required to  
1935 be disclosed in its registration statement by reporting all material changes or additions within  
1936 15 days after the end of the month in which it learns of each change or addition."

1937 (b) [~~Any~~] An insurer [~~which~~] that is subject to registration under this section shall  
1938 register within 15 days after it becomes subject to registration, and annually thereafter by May  
1939 1 of each year for the previous calendar year, unless the commissioner for good cause extends  
1940 the time for registration and then at the end of the extended time period. The commissioner  
1941 may require any insurer authorized to do business in the state, which is a member of a holding  
1942 company system, and which is not subject to registration under this section, to furnish a copy of  
1943 the registration statement, the summary specified in Subsection (3), or any other information  
1944 filed by the insurer with the insurance regulatory authority of domiciliary jurisdiction.

1945 (2) [~~Every~~] An insurer subject to registration shall file the registration statement with  
1946 the commissioner on a form and in a format prescribed by the National Association of  
1947 Insurance Commissioners, which shall contain the following current information:

1948 (a) the capital structure, general financial condition, and ownership and management of  
1949 the insurer and any person controlling the insurer;

1950 (b) the identity and relationship of every member of the insurance holding company  
1951 system;

1952 (c) any of the following agreements in force, and transactions currently outstanding or  
1953 which have occurred during the last calendar year between the insurer and its affiliates:

1954 (i) loans, other investments, or purchases, sales or exchanges of securities of the  
1955 affiliates by the insurer or of securities of the insurer by its affiliates;

1956 (ii) purchases, sales, or exchanges of assets;

1957 (iii) transactions not in the ordinary course of business;

1958 (iv) guarantees or undertakings for the benefit of an affiliate which result in an actual  
1959 contingent exposure of the insurer's assets to liability, other than insurance contracts entered  
1960 into in the ordinary course of the insurer's business;

1961 (v) all management agreements, service contracts, and all cost-sharing arrangements;

1962 (vi) reinsurance agreements;

1963 (vii) dividends and other distributions to shareholders; and

1964 (viii) consolidated tax allocation agreements;

1965 (d) any pledge of the insurer's stock, including stock of any subsidiary or controlling  
1966 affiliate, for a loan made to any member of the insurance holding company system; ~~and~~

1967 (e) if requested by the commissioner, financial statements of or within an insurance  
1968 holding company system, including all affiliates:

1969 (i) which may include annual audited financial statements filed with the United States  
1970 Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or  
1971 the Securities Exchange Act of 1934, as amended; and

1972 (ii) which request is satisfied by providing the commissioner with the most recently  
1973 filed parent corporation financial statements that have been filed with the United States  
1974 Securities and Exchange Commission;

1975 ~~[(e)]~~ (f) any other matters concerning transactions between registered insurers and any  
1976 affiliates as may be included in any subsequent registration forms adopted or approved by the  
1977 commissioner[-];

1978 (g) statements that the insurer's board of directors oversees corporate governance and  
1979 internal controls and that the insurer's officers or senior management have approved,  
1980 implemented, and continue to maintain and monitor corporate governance and internal control  
1981 procedures; and

1982 (h) any other information required by rule made by the commissioner in accordance



1983 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1984 (3) All registration statements shall contain a summary outlining all items in the  
1985 current registration statement representing changes from the prior registration statement.

1986 (4) No information need be disclosed on the registration statement filed pursuant to  
1987 Subsection (2) if the information is not material for the purposes of this section. Unless the  
1988 commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or  
1989 extensions of credit, investments, or guarantees involving one-half of 1%, or less, of an  
1990 insurer's admitted assets as of the next preceding December 31 may not be considered material  
1991 for purposes of this section.

1992 (5) Subject to Section 31A-16-106, each registered insurer shall report to the  
1993 commissioner a dividend or other distribution to shareholders within 15 business days  
1994 following the declaration of the dividend or distribution.

1995 ~~[(5)]~~ (6) Any person within an insurance holding company system subject to  
1996 registration shall provide complete and accurate information to an insurer if the information is  
1997 reasonably necessary to enable the insurer to comply with the provisions of this chapter.

1998 ~~[(6)]~~ (7) The commissioner shall terminate the registration of any insurer which  
1999 demonstrates that it no longer is a member of an insurance holding company system.

2000 ~~[(7)]~~ (8) The commissioner may require or allow two or more affiliated insurers subject  
2001 to registration under this section to file a consolidated registration statement.

2002 ~~[(8)]~~ (9) The commissioner may allow an insurer which is authorized to do business in  
2003 this state, and which is part of an insurance holding company system, to register on behalf of  
2004 any affiliated insurer which is required to register under Subsection (1) and to file all  
2005 information and material required to be filed under this section.

2006 ~~[(9) The provisions of this]~~ (10) This section ~~[do]~~ does not apply to any insurer,  
2007 information, or transaction if, and to the extent that, the commissioner by rule or order exempts  
2008 the insurer from ~~[the provisions of]~~ this section.

2009 ~~[(10)]~~ (11) Any person may file with the commissioner a disclaimer of affiliation with  
2010 any authorized insurer, or a disclaimer of affiliation may be filed by any insurer or any member  
2011 of an insurance holding company system. The disclaimer shall fully disclose all material  
2012 relationships and bases for affiliation between the person and the insurer as well as the basis for  
2013 disclaiming the affiliation. ~~[After a disclaimer has been filed, the insurer shall be relieved of~~

~~any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard, and after making specific findings of fact to support the disallowance.]~~

A disclaimer of affiliation is considered to have been granted unless the commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. If disallowed, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer is granted by the commissioner, or if the disclaimer is considered to have been approved.

(12) The ultimate controlling person of an insurer subject to registration shall also file an annual enterprise risk report. The annual enterprise report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company that could pose enterprise risk to the insurer. The annual enterprise risk report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

~~(11)~~ (13) The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

Section 7. Section **31A-16-106** is amended to read:

**31A-16-106. Standards and management of an insurer within a holding company system.**

(1) (a) Transactions within ~~[a]~~ an insurance holding company system to which an insurer subject to registration is a party are subject to the following standards:

(i) the terms shall be fair and reasonable;

(ii) agreements for cost sharing services and management shall include the provisions required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

~~(iii)~~ (iii) charges or fees for services performed shall be reasonable;

~~(iii)~~ (iv) expenses incurred and payment received shall be allocated to the insurer in

conformity with customary insurance accounting practices consistently applied;

~~[(iv)]~~ (v) the books, accounts, and records of each party to all transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including the accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and

~~[(v)]~~ (vi) the insurer's surplus held for policyholders, following any dividends or distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding liabilities and shall be adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in Subsections (1)(a)(i) through (vi), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days ~~[prior to]~~ before entering into the transaction, or within any shorter period the commissioner may permit, if the commissioner has not disapproved the transaction within the period~~[:]~~. The notice for an amendment or modification shall include the reasons for the change and financial impact on the domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any:

(i) sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments if the transactions are equal to, or exceed as of the next preceding December 31:

(A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus held for policyholders;

(B) for life insurers, 3% of the insurer's admitted assets;

(ii) loans or extensions of credit made to any person who is not an affiliate, if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit if the transactions are equal to, or exceed as of the next preceding December 31:

(A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of

2076 surplus held for policyholders;

2077 (B) for life insurers, 3% of the insurer's admitted assets;

2078 (iii) reinsurance agreements or modifications to reinsurance agreements [~~in which the~~  
2079 ~~reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the~~  
2080 ~~insurer's surplus held for policyholders, as of the next preceding December 31, including those~~  
2081 ~~agreements which may require as consideration the transfer of assets from an insurer to a~~  
2082 ~~nonaffiliate, if an agreement or understanding exists between the insurer and the nonaffiliate~~  
2083 ~~that any portion of the assets will be transferred to one or more affiliates of the insurer;]~~  
2084 including an agreement in which the reinsurance premium, a change in the insurer's liabilities,  
2085 or the projected reinsurance premium or a change in the insurer's liabilities in any of the current  
2086 and succeeding three years, equals or exceeds 5% of the insurer's surplus held for  
2087 policyholders, as of the next preceding December 31, including those agreements that may  
2088 require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement  
2089 or understanding exists between the insurer and the non-affiliate that any portion of the assets  
2090 will be transferred to one or more affiliates of the reinsurer;

2091 (iv) all management agreements, service contracts, tax allocation agreements, and all  
2092 cost-sharing arrangements;

2093 (v) guarantees when made by a domestic insurer, except that:

2094 (A) a guarantee that is quantifiable as to amount is not subject to the notice  
2095 requirements of this Subsection (1) unless it exceeds the lesser of .5% of the insurer's admitted  
2096 assets or 10% of surplus held for policyholders, as of the next preceding December 31; and

2097 (B) a guarantee that is not quantifiable as to amount is subject to the notice  
2098 requirements of this Subsection (1);

2099 (vi) direct or indirect acquisitions or investments in a person that controls the insurer or  
2100 in an affiliate of the insurer in an amount that, together with its present holdings in the  
2101 investments, exceeds 2.5% of the insurer's surplus to policyholders, except that a direct or  
2102 indirect acquisition or investment in a subsidiary acquired pursuant to Section 31A-16-102.5,  
2103 or in non-subsiary insurance affiliate that is subject to this chapter, is exempt from this  
2104 Subsection (1)(b)(vi);

2105 ~~(v)~~ (vii) any material transactions, specified by rule, which the commissioner  
2106 determines may adversely affect the interests of the insurer's policyholders; and

2107 ~~[(vi) this subsection]~~ (viii) this Subsection (1) may not be interpreted to authorize or  
2108 permit any transactions which would be otherwise contrary to law in the case of an insurer not  
2109 a member of the same holding company system.

2110 (c) A domestic insurer may not enter into transactions which are part of a plan or series  
2111 of like transactions with persons within the holding company system if the purpose of the  
2112 separate transactions is to avoid the statutory threshold amount and thus to avoid the review by  
2113 the commissioner that would occur otherwise. If the commissioner determines that the  
2114 separate transactions were entered into over any 12 month period for such a purpose, ~~[he]~~ the  
2115 commissioner may exercise ~~[his]~~ the commissioner's authority under Section 31A-16-110.

2116 (d) The commissioner, in reviewing transactions pursuant to Subsection (1)(b), shall  
2117 consider whether the transactions comply with the standards set forth in Subsection (1)(a) and  
2118 whether they may adversely affect the interests of policyholders.

2119 (e) The commissioner shall be notified within 30 days of any investment of the  
2120 domestic insurer in any one corporation, if the total investment in the corporation by the  
2121 insurance holding company system exceeds 10% of the corporation's voting securities.

2122 (2) (a) A domestic insurer may not pay any extraordinary dividend or make any other  
2123 extraordinary distribution to its shareholders until:

2124 (i) 30 days after the commissioner has received notice of the declaration of the  
2125 dividend and has not within the 30-day period disapproved the payment; or

2126 (ii) the commissioner has approved the payment within the 30-day period.

2127 (b) For purposes of this ~~[subsection]~~ Subsection (2), an extraordinary dividend or  
2128 distribution includes any dividend or distribution of cash or other property, fair market value of  
2129 which, together with that of other dividends or distributions made within the preceding 12  
2130 months, exceeds the lesser of:

2131 (i) 10% of the insurer's surplus held for policyholders as of the next preceding  
2132 December 31; ~~[or]~~

2133 (ii) the net gain from operations of the insurer, if the insurer is a life insurer, or the net  
2134 income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month  
2135 period ending the next preceding December 31; or

2136 (iii) an extraordinary dividend does not include pro rata distributions of any class of the  
2137 insurer's own securities.

(c) In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(d) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution, which is conditioned upon the commissioner's approval of the dividend or distribution, and the declaration shall confer no rights upon shareholders until:

(i) the commissioner has approved the payment of the dividend or distribution; or

(ii) the commissioner has not disapproved the payment within the 30-day period referred to in Subsection (2)(a).

(3) (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer may not be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

(b) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of Subsection (1)(a).

(c) (i) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of a domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity.

(ii) At least one person described in Subsection (3)(c)(i) shall be included in a quorum for the transaction of business at a meeting of the board of directors or a committee of the board of directors.

(d) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The one or

more committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers considered to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(e) Subsections (3)(c) and (d) do not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees of the board of directors that meet the requirements of Subsections (3)(c) and (d) with respect to the controlling entity.

(f) An insurer may make application to the commissioner for a waiver from the requirements of this Subsection (3), if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this Subsection (3) based upon unique circumstances. The commissioner may consider various factors including:

(i) the type of business entity;

(ii) volume of business written;

(iii) availability of qualified board members; or

(iv) the ownership or organizational structure of the entity.

(4) (a) For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

(i) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(ii) the extent to which the insurer's business is diversified among several lines of insurance;

(iii) the number and size of risks insured in each line of business;

(iv) the extent of the geographical dispersion of the insurer's insured risks;

(v) the nature and extent of the insurer's reinsurance program;

(vi) the quality, diversification, and liquidity of the insurer's investment portfolio;

(vii) the recent past and projected future trend in the size of the insurer's investment portfolio;

2200 (viii) the surplus as regards policyholders maintained by other comparable insurers;  
 2201 (ix) the adequacy of the insurer's reserves; and  
 2202 (x) the quality and liquidity of investments in affiliates.

2203 (b) The commissioner may treat an investment described in Subsection (4)(a)(x) as a  
 2204 disallowed asset for purposes of determining the adequacy of surplus as regards policyholders  
 2205 whenever in the judgment of the commissioner the investment so warrants.

2206 Section 8. Section **31A-16-107.5**, which is renumbered from Section 31A-16-108 is  
 2207 renumbered and amended to read:

2208 **[31A-16-108]. 31A-16-107.5. Examination of registered insurers.**

2209 (1) Subject to the limitation contained in this section and the powers which the  
 2210 commissioner has under Chapter 2, Administration of Insurance Laws, relating to the  
 2211 examination of insurers, the commissioner has the power to ~~[order any]~~ examine an insurer  
 2212 registered under Section 31A-16-105 ~~[to produce the records, books, or other informational~~  
 2213 ~~papers in the possession of the insurer or its affiliates which the commissioner considers~~  
 2214 ~~necessary]~~ and its affiliates to ascertain the financial condition [or legality of conduct] of the  
 2215 insurer[. If an insurer fails to comply with this order, the commissioner may examine the  
 2216 affiliates to obtain the information.], including the enterprise risk to the insurer by the ultimate  
 2217 controlling party, or by the insurance holding company system on a consolidated basis.

2218 ~~[(2) The commissioner shall exercise his power under Subsection (1) only if the~~  
 2219 ~~examination of the insurer under Chapter 2 is inadequate, or the interests of the policyholders~~  
 2220 ~~of the insurer may be adversely affected if the commissioner fails to exercise his power.]~~

2221 (2) (a) The commissioner may order an insurer registered under Section 31A-16-105 to  
 2222 produce the records, books, or other information papers in the possession of the insurer or its  
 2223 affiliates as are reasonably necessary to determine compliance with this chapter.

2224 (b) To determine compliance with this chapter, the commissioner may order an insurer  
 2225 registered under Section 31A-16-105 to produce information not in the possession of the  
 2226 insurer if the insurer can obtain access to the information pursuant to contractual relationships,  
 2227 statutory obligations, or other method.

2228 (c) If an insurer cannot obtain the information requested by the commissioner, the  
 2229 insurer shall provide the commissioner a detailed explanation of the reason that the insurer  
 2230 cannot obtain the information and the identity of the holder of the information.



(d) Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of \$5,000 for each day's delay, or may suspend or revoke the insurer's license.

(3) The commissioner may retain, at the registered insurer's expense, attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, if they are necessary to assist in the conduct of the examination under Subsection (1). Any persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(4) ~~Each~~ A registered insurer who produces records, books, and papers under Subsection (1) for examination is liable for and shall pay the expense of the examination under Section 31A-2-205.

(5) If an insurer fails to comply with an order issued under this section, the commissioner may:

(a) examine the affiliates to obtain the information; or

(b) issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with this section.

(6) Upon the failure or refusal of any person to obey a subpoena under Subsection (5), the commissioner may petition the Third District Court of Salt Lake County to enter an order compelling the witness to appear and testify or produce documentary evidence. A person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. A person subpoenaed is entitled to the same fees and mileage, if claimed, as a witness in the Third District Court of Salt Lake County, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

Section 9. Section **31A-16-108.5** is enacted to read:

**31A-16-108.5. Supervisory colleges.**

(1) (a) For an insurer registered under Section 31A-16-105 and in accordance with Subsection (3), the commissioner may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include the following:

2262 (i) initiating the establishment of a supervisory college;  
2263 (ii) clarifying the membership and participation of other supervisors in the supervisory  
2264 college;  
2265 (iii) clarifying the functions of the supervisory college and the role of other regulators,  
2266 including the establishment of a group-wide supervisor;  
2267 (iv) coordinating the ongoing activities of the supervisory college, including;  
2268 (A) planning meetings;  
2269 (B) supervisory activities; and  
2270 (C) processes for information sharing; and  
2271 (v) establishing a crisis management plan.  
2272 (2) (a) A registered insurer subject to this section is liable for and shall pay the  
2273 reasonable expenses of the commissioner's participation in a supervisory college in accordance  
2274 with Subsection (3) including reasonable travel expenses.  
2275 (b) For purposes of this section, a supervisory college may be convened as either a  
2276 temporary or permanent forum for communication and cooperation between the regulators  
2277 charged with supervision of the insurer or its affiliates and the commissioner may establish a  
2278 regular assessment to the insurer for the payment of these expenses.  
2279 (3) (a) The commissioner may participate in a supervisory college with other regulators  
2280 charged with supervision of the insurer or its affiliates, including:  
2281 (i) other state regulatory agencies;  
2282 (ii) federal regulatory agencies; or  
2283 (iii) international regulatory agencies.  
2284 (b) The commissioner may enter into agreements in accordance with Section  
2285 31A-16-107.5 providing the basis for cooperation between the commissioner and other  
2286 regulatory agencies, and the activities of the supervisory college, in order to assess:  
2287 (i) the business strategy;  
2288 (ii) financial position;  
2289 (iii) legal and regulatory position;  
2290 (iv) risk exposure; and  
2291 (v) management and governance processes.  
2292 (c) Nothing in this section shall delegate to the supervisory college the authority of the

2293 commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

2294 Section 10. Section **31A-16-109** is amended to read:

2295 **31A-16-109. Confidentiality of information obtained by commissioner.**

2296 ~~[All information]~~ (1) Information, documents, and copies of these ~~[which]~~ that are

2297 obtained by or disclosed to the commissioner or any other person in the course of an

2298 examination or investigation made under Section ~~[31A-16-108]~~ 31A-16-107.5, and all

2299 information reported under Section 31A-16-105, is confidential. It is not subject to subpoena

2300 and may not be made public by the commissioner or any other person, except it may be

2301 provided to the insurance departments of other states, without the prior written consent of the

2302 insurer to which it pertains. The confidentiality of this section does not apply if the

2303 commissioner, after giving the insurer and its affiliates who would be affected by the

2304 disclosure, proper notice and an opportunity to be heard, and determines that the interests of

2305 policyholders, shareholders, or the public will be served by the publication of the information.

2306 In this situation, the commissioner may publish all or any part of the information in any manner

2307 ~~[he]~~ the commissioner considers appropriate.

2308 (2) Neither the commissioner nor any person who received documents, materials, or

2309 other information while acting under the authority of the commissioner or with whom the

2310 documents, materials, or other information are shared pursuant to this chapter shall be

2311 permitted or required to testify in any private civil action concerning any confidential

2312 documents, materials, or information subject to Subsection (1).

2313 (3) (a) To assist in the performance of the commissioner's duties, the commissioner:

2314 (i) may share documents, materials, or other information, including the confidential

2315 documents, materials, or information subject to Subsection (1), with the following if the

2316 recipient agrees in writing to maintain the confidentiality status of the document, material, or

2317 other information, and has verified in writing the legal authority to maintain confidentiality:

2318 (A) other state, federal, and international regulatory agencies;

2319 (B) the National Association of Insurance Commissioners and its affiliates and

2320 subsidiaries; and

2321 (C) state, federal, and international law enforcement authorities, including members of

2322 a supervisory college described in Section 31A-16-108.5.

2323 (ii) notwithstanding Subsection (1), may only share confidential documents, material,

2324 or information reported pursuant to Section 31A-16-105 with commissioners of states having  
2325 statutes or regulations substantially similar to Subsection (1) and who have agreed in writing  
2326 not to disclose the documents, material, or information;

2327 (iii) may receive documents, materials, or information, including otherwise  
2328 confidential documents, materials, or information from the National Association of Insurance  
2329 Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement  
2330 officials of other foreign or domestic jurisdictions, and shall maintain as confidential any  
2331 document, material, or information received with notice or the understanding that it is  
2332 confidential under the laws of the jurisdiction that is the source of the document, material, or  
2333 information; and

2334 (iv) shall enter into written agreements with the National Association of Insurance  
2335 Commissioners governing sharing and use of information provided pursuant to this chapter  
2336 consistent with this Subsection (2) that shall:

2337 (A) specify procedures and protocols regarding the confidentiality and security of  
2338 information shared with the National Association of Insurance Commissioners and its affiliates  
2339 and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the  
2340 National Association of Insurance Commissioners with other state, federal, or international  
2341 regulators;

2342 (B) specify that ownership of information shared with the National Association of  
2343 Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter remains  
2344 with the commissioner and the National Association of Insurance Commissioner's use of the  
2345 information is subject to the direction of the commissioner;

2346 (C) require prompt notice to be given to an insurer whose confidential information in  
2347 the possession of the National Association of Insurance Commissioners pursuant to this chapter  
2348 is subject to a request or subpoena to the National Association of Insurance Commissioners for  
2349 disclosure or production; and

2350 (D) require the National Association of Insurance Commissioners and its affiliates and  
2351 subsidiaries to consent to intervention by an insurer in any judicial or administrative action in  
2352 which the National Association of Insurance Commissioners and its affiliates and subsidiaries  
2353 may be required to disclose confidential information about the insurer shared with the National  
2354 Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this

2355 chapter.

2356 (4) The sharing of information by the commissioner pursuant to this chapter does not  
2357 constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely  
2358 responsible for the administration, execution, and enforcement of this chapter.

2359 (5) A waiver of any applicable claim of confidentiality in the documents, materials, or  
2360 information does not occur as a result of disclosure to the commissioner under this section or  
2361 as a result of sharing as authorized in Subsection (3).

2362 (6) Documents, materials, or other information in the possession or control of the  
2363 National Association of Insurance Commissioners pursuant to this chapter are:

2364 (a) confidential, not public records, and not open to public inspection; and;

2365 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management  
2366 Act.

2367 Section 11. Section **31A-16-112** is enacted to read:

2368 **31A-16-112. Sanctions.**

2369 (1) (a) Notwithstanding Section 31A-2-308, the following sanctions apply:

2370 (i) An insurer failing, without just cause, to file a registration statement required by this  
2371 chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each day's delay, to  
2372 be recovered by the commissioner and the penalty so recovered shall be paid into the General  
2373 Fund.

2374 (ii) The maximum penalty under this section is \$250,000.

2375 (b) The commissioner may reduce the penalty if the insurer demonstrates to the  
2376 commissioner that the imposition of the penalty would constitute a financial hardship to the  
2377 insurer.

2378 (2) A director or officer of an insurance holding company system who knowingly  
2379 violates, participates in, or assents to, or who knowingly shall permit any of the officers or  
2380 agents of the insurer to engage in transactions or make investments that have not been properly  
2381 reported or submitted pursuant to Subsection 31A-16-105(1), 31A-16-106(1)(b), or  
2382 31A-16-106(2) or that violates this chapter, shall pay, in their individual capacity, a civil  
2383 forfeiture of not more than \$10,000 per violation, notwithstanding Section 31-A-2-308, after  
2384 notice and hearing before the commissioner. In determining the amount of the civil forfeiture,  
2385 the commissioner shall take into account the appropriateness of the forfeiture with respect to

2386 the gravity of the violation, the history of previous violations, and such other matters as justice  
2387 may require.

2388 (3) Whenever it appears to the commissioner that any insurer subject to this chapter or  
2389 a director, officer, employee, or agent of the insurer has engaged in any transaction or entered  
2390 into a contract that is subject to Section 31A-16-106 and that would not have been approved  
2391 had the approval been requested, the commissioner may order the insurer to cease and desist  
2392 immediately any further activity under that transaction or contract. After notice and hearing,  
2393 the commissioner may also order the insurer to void any contract and restore the status quo if  
2394 the action if the action is in the best interest of the policyholders, creditors, or the public.

2395 (4) Whenever it appears to the commissioner that an insurer or any director, officer,  
2396 employee or agent of the insurer has committed a willful violation of this chapter, the  
2397 commissioner may cause criminal proceedings to be instituted by the Third District Court of  
2398 Salt Lake County, against the insurer or the responsible director, officer, employee, or agent of  
2399 the insurer. An insurer that willfully violates this chapter may be fined not more than \$250,000  
2400 notwithstanding Section 31A-2-308. An individual who willfully violates this chapter may be  
2401 fined in the individual's individual capacity not more than \$100,000 notwithstanding Section  
2402 31A-2-308, and is guilty of a third-degree felony.

2403 (5) An officer, director, or employee of an insurance holding company system who  
2404 willfully and knowingly subscribes to or makes or causes to be made any false statements, false  
2405 reports, or false filings with the intent to deceive the commissioner in the performances of the  
2406 commissioner's duties under this chapter, is guilty of a third-degree felony. Any fines imposed  
2407 shall be paid by the officer, director, or employee in the officer's, director's, or employee's  
2408 individual capacity.

2409 (6) Whenever it appears to the commissioner that a person has committed a violation  
2410 of Section 31A-16-103 and that prevents the full understanding of the enterprise risk to the  
2411 insurer by affiliates or by the insurance holding company system, the violation may serve as an  
2412 independent basis for disapproving dividends or distributions and for placing insurer under an  
2413 order of supervision in accordance with Section 31A-27-503.

2414 Section 12. Section **31A-16-113** is enacted to read:

2415 **31A-16-113. Receivership.**

2416 Whenever it appears to the commissioner that a person has committed a violation of

2417 this chapter that so impairs the financial condition of a domestic insurer as to threaten  
2418 insolvency or make the further transaction of business by it hazardous to its policyholders,  
2419 creditors, shareholders, or the public, then the commissioner may proceed as provided in  
2420 Section 31A-16-114 to take possession of the property of the domestic insurer and to conduct  
2421 its business.

2422 Section 13. Section **31A-16-114** is enacted to read:

2423 **31A-16-114. Recovery.**

2424 (1) If an order for liquidation or rehabilitation of a domestic insurer is entered, the  
2425 receiver appointed under the order shall have a right to recover on behalf of the insurer:

2426 (a) from any parent corporation, holding company, or person or affiliate who otherwise  
2427 controlled the insurer, the amount of distributions other than distributions of shares of the same  
2428 class of stock paid by the insurer on its capital stock; or

2429 (b) any payment in the form of a bonus, termination settlement, or extraordinary lump  
2430 sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee,  
2431 when the distribution or payment pursuant to Subsection (1)(a) or this Subsection (1)(b) is  
2432 made at any time during the one year preceding the petition for liquidation, conservation, or  
2433 rehabilitation, as the case may be, subject to the limitations of Subsections (2), (3), and (4).

2434 (2) A distribution may not be recovered if the parent or affiliate shows that when paid  
2435 the distribution was lawful and reasonable, and that the insurer did not know and could not  
2436 reasonably have known that the distribution might adversely affect the ability of the insurer to  
2437 fulfill its contractual obligations.

2438 (3) A person who was a parent corporation or holding company or a person who  
2439 otherwise controlled the insurer or affiliate at the time the distributions were paid shall be  
2440 liable up to amount of distributions or payment under Subsection (1) that the person received.  
2441 A person who otherwise controlled the insurer at the time the distributions were declared is  
2442 liable up to the amount of distributions that would have been received if they had been paid  
2443 immediately. If two or more persons are liable with respect to the same distributions, they shall  
2444 be jointly and severally liable.

2445 (4) The maximum amount recoverable under this section shall be the amount needed in  
2446 excess of all other available assets of the impaired or insolvent insurer to pay the contractual  
2447 obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under Subsection (3) is insolvent or otherwise fails to pay claims due from the person, its parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid, are jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

Section 14. Section **31A-16-115** is enacted to read:

**31A-16-115. Revocation, suspension, or nonrenewal of insurers license.**

Whenever it appears to the commissioner that a person has committed a violation of this chapter that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Section 15. Section **31A-16-116** is enacted to read:

**31A-16-116. Rules and orders.**

The commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules necessary to carry out this chapter. The commissioner may issue orders as is necessary to carry out this chapter.

Section 16. Section **31A-16-117** is enacted to read:

**31A-16-117. Judicial review -- Mandamus.**

(1) A person aggrieved by an act, determination, rule, or order or any other action of the commissioner pursuant to this chapter may seek judicial review in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) The filing of an appeal pursuant to this section shall stay the application of any rule, order, or other action of the commissioner to the appealing party unless the court, after giving party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

(3) A person aggrieved by a failure of the commissioner to act or make a determination required by this chapter may petition the Third District Court of Salt Lake County for writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or



2479 make a determination.

2480 Section 17. Section **31A-16-118** is enacted to read:

2481 **31A-16-118. Conflict with other laws.**

2482 If any law or part of a law of this state is inconsistent with this chapter, this chapter  
2483 governs.

2484 Section 18. Section **31A-16-119** is enacted to read:

2485 **31A-16-119. Severability.**

2486 If any chapter, section, or subsection of this chapter or the application of any chapter,  
2487 section, or subsection to any person or circumstance is held invalid, the remainder of the  
2488 provisions of this chapter shall be given effect without the invalid provision or application.  
2489 The provisions of this chapter are severable.

2490 Section 19. Section **31A-16a-101** is enacted to read:

2491 **CHAPTER 16A. OWN RISK AND SOLVENCY ASSESSMENT ACT**

2492 **31A-16a-101. Title -- Scope.**

2493 (1) This chapter is known as the "Own Risk and Solvency Assessment Act."

2494 (2) This chapter applies to an insurer domiciled in this state unless exempt pursuant to  
2495 Section 31A-16a-106.

2496 (3) An own risk and solvency assessment summary report is confidential pursuant to  
2497 Section 31A-16a-108.

2498 Section 20. Section **31A-16a-102** is enacted to read:

2499 **31A-16a-102. Definitions.**

2500 (1) "Insurance group" means the insurers and affiliates included within an insurance  
2501 holding company system as defined in Section 31A-1-301.

2502 (2) "Insurer" has the same meaning as defined in Section 31A-1-301, except that it  
2503 does not include an agency, authority, or instrumentality of the United States, its possessions  
2504 and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or  
2505 political subdivision of a state.

2506 (3) "Own risk and solvency assessment" means a confidential internal assessment:

2507 (a) appropriate to the nature, scale, and complexity of an insurer or insurance group;

2508 (b) conducted by that insurer or insurance group; and

(c) including the material and relevant risks associated with the insurer's or insurance group's current business plan, and the sufficiency of capital resources to support those risks.

(4) "Own risk and solvency assessment guidance manual" means the current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners.

(5) "Own risk and solvency assessment summary report" means a confidential high-level summary of an insurer's or insurance group's own risk and solvency assessment.

Section 21. Section **31A-16a-103** is enacted to read:

**31A-16a-103. Risk management framework.**

(1) An insurer shall maintain a risk management framework, to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks.

(2) An insurer may satisfy Subsection (1) if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

Section 22. Section **31A-16a-104** is enacted to read:

**31A-16a-104. Own risk and solvency assessment requirement.**

(1) (a) Subject to Section 31A-16a-106, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the own risk and solvency assessment guidance manual.

(b) A change in the own risk and solvency assessment guidance manual shall be effective on the January 1 following the calendar year in which the changes have been adopted by the National Association of Insurance Commissioners.

(2) The own risk and solvency assessment shall be conducted:

(a) no less than annually; and

(b) at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

Section 23. Section **31A-16a-105** is enacted to read:

**31A-16a-105. Own risk and solvency assessment summary report.**

(1) Upon the commissioner's request, an insurer shall submit to the commissioner:

(a) an own risk and solvency assessment summary report; or

(b) any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual, applicable to the insurer, the insurance

2540 group of which it is a member, or both the insurer and insurance group.

2541 (2) Notwithstanding a request from the commissioner, if the insurer is a member of an  
2542 insurance group, the insurer shall submit the one or more reports required by this section if the  
2543 commissioner is the lead state commissioner of the insurance group as determined by the  
2544 procedures within the Financial Analysis Handbook adopted by the National Association of  
2545 Insurance Commissioners.

2546 (3) The commissioner may not request the one or more reports required by this section  
2547 more than once each year.

2548 (4) The one or more reports shall include a signature of the insurer's or insurance  
2549 group's chief risk officer or other executive having responsibility for the oversight of the  
2550 insurer's enterprise risk management process attesting to the best of the person's belief and  
2551 knowledge that:

2552 (a) the insurer applies the enterprise risk management process described in the own risk  
2553 and solvency assessment summary report; and

2554 (b) a copy of the report has been provided to the insurer's board of directors or the  
2555 appropriate committee of the board of directors.

2556 (5) An insurer may comply with Subsection (1) by providing the most recent and  
2557 substantially similar report provided by the insurer or another member of an insurance group of  
2558 which the insurer is a member, to the commissioner of another state, or to a supervisor or  
2559 regulator of a foreign jurisdiction if:

2560 (a) the report provides information that is comparable to the information described in  
2561 the own risk and solvency assessment guidance manual; and

2562 (b) the report is written in a language other than English, it is accompanied by a  
2563 translation of that report into the English language.

2564 Section 24. Section **31A-16a-106** is enacted to read:

2565 **31A-16a-106. Exemption.**

2566 (1) An insurer shall be exempt from the requirements of this chapter, if:

2567 (a) the insurer has annual direct written and unaffiliated assumed premium, including  
2568 international direct and assumed premium, but excluding premiums reinsured with the Federal  
2569 Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

2570 (b) the insurance group of which the insurer is a member has annual direct written and

2571 unaffiliated assumed premium including international direct and assumed premium, but  
2572 excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood  
2573 Program, less than \$1,000,000,000.

2574 (2) If an insurer qualifies for exemption pursuant to Subsection (1)(a), but the  
2575 insurance group of which the insurer is a member does not qualify for exemption pursuant to  
2576 Subsection (1)(b), the own risk and solvency assessment summary report that may be required  
2577 pursuant to Section 31A-16a-105 shall:

2578 (a) include every insurer within the insurance group; or

2579 (b) if more than one own risk and solvency assessment summary report is submitted for  
2580 any combination of insurers, the reports shall include every insurer within the insurance group.

2581 (3) If an insurer does not qualify for exemption pursuant to Subsection (1)(a), but the  
2582 insurance group of which it is a member qualifies for exemption pursuant to Subsection (1)(b),  
2583 then the only own risk and solvency assessment summary report that may be required pursuant  
2584 to Section 31A-16a-105 is the report applicable to that insurer.

2585 (4) An insurer that does not qualify for exemption pursuant to Subsection (1) may  
2586 apply to the commissioner for a waiver from the requirements of this chapter.

2587 (5) In deciding whether to grant the insurer's request for waiver, the commissioner will  
2588 consider unique circumstances that may include factors such as:

2589 (a) the type and volume of business written;

2590 (b) ownership and organizational structure; and

2591 (c) any other factor the commissioner considers relevant to the insurer or insurance  
2592 group of which the insurer is a member.

2593 (6) If the insurer is part of an insurance group with insurers domiciled in more than one  
2594 state, the commissioner shall coordinate with the lead state commissioner, as determined by  
2595 procedures outlined in the Financial Analysis Handbook of the National Association of  
2596 Insurance Commissioners, and with the other domiciliary commissioners in considering  
2597 whether to grant the insurer's request for a waiver.

2598 (7) Notwithstanding the exemptions stated in this section, the commissioner may  
2599 require that an insurer maintain a risk management framework, conduct an own risk and  
2600 solvency assessment, and file an own risk and solvency assessment summary report based on  
2601 unique circumstances including:

(a) the insurer has a risk-based capital for company action level event as set forth in Section 31A-17-603;

(b) the insurer meets one or more of the standards of an insurer considered to be in hazardous financial condition or potentially hazardous financial condition, as defined by rule made under Subsection 31A-27a-101(3)(c);

(c) the insurer otherwise exhibits qualities of a troubled insurer as determined by the commissioner;

(d) the type and volume of business written;

(e) ownership and organizational structure; or

(f) federal agency requests and international supervisor requests.

(8) If an insurer that qualifies for an exemption pursuant to Subsection (1) subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this chapter.

Section 25. Section **31A-16a-107** is enacted to read:

**31A-16a-107. Contents of the own risk and solvency assessment summary report.**

(1) The own risk and solvency assessment summary report shall be prepared consistent with the own risk and solvency assessment guidance manual, subject to Subsection (3).

(2) Documentation supporting information shall be maintained and made available upon examination or upon request of the commissioner.

(3) The review of the own risk and solvency assessment summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multi-state or global insurers and insurance groups.

Section 26. Section **31A-16a-108** is enacted to read:

**31A-16a-108. Confidentiality of information obtained by commissioner.**

(1) Documents, materials, or other information, including the own risk and solvency assessment summary report, in the possession of or control of the department that are obtained by, created by, or disclosed to the commissioner or any other person under this chapter, is proprietary and contains trade secrets. These documents, materials, or other information are:

2633 (a) confidential, not public records, and not open to public inspection; and  
2634 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management  
2635 Act.

2636 (2) The commissioner is authorized to use the documents, materials, or other  
2637 information in the furtherance of any regulatory or legal action brought as a part of the  
2638 commissioner's official duties.

2639 (3) Other than under Subsection (2), the commissioner may not otherwise make the  
2640 documents, materials, or other information public without the prior written consent of the  
2641 insurer.

2642 (4) Neither the commissioner nor any person who received documents, materials, or  
2643 other own risk and solvency assessment related information, through examination or otherwise,  
2644 while acting under the authority of the commissioner or with whom such documents, materials,  
2645 or other information are shared pursuant to this chapter shall be permitted or required to testify  
2646 in any private civil action concerning any confidential documents, materials, or information  
2647 subject to Subsection (1).

2648 (5) To assist in the performance of the commissioner's regulatory duties, the  
2649 commissioner:

2650 (a) may upon request, share documents, materials, or other own risk and solvency  
2651 assessment related information, including the confidential documents, materials, or information  
2652 subject to Subsection (1), including proprietary and trade secret documents and materials with:

2653 (i) other state, federal, and international financial regulatory agencies, including  
2654 members of any supervisory college as described in Chapter 16, Insurance Holding Companies;  
2655 (ii) the National Association of Insurance Commissioners; and  
2656 (iii) any third-party consultants designated by the commissioner;

2657 (b) may not share the information described in Subsection (5)(a) unless the recipient of  
2658 the information agrees in writing to:

2659 (i) maintain the confidentiality status of the own risk and solvency assessment related  
2660 documents, materials, or other information; and  
2661 (ii) has the legal authority to maintain confidentiality;

2662 (c) may receive documents from regulatory officials of other foreign or domestic  
2663 jurisdictions, including members of any supervisory college described in Chapter 16, Insurance

2664 Holding Companies, and from the National Association of Insurance Commissioner, materials  
2665 or other own risk and solvency assessment related information, including:  
2666 (i) otherwise confidential documents, materials, or information; or  
2667 (ii) proprietary and trade-secret information or documents;  
2668 (d) shall maintain as confidential any documents, materials, or information received  
2669 under Subsection (5)(c) with notice or the understanding that it is confidential under the laws  
2670 of the jurisdiction that is the source of the document, material, or information;  
2671 (e) shall enter into a written agreement with the National Association of Insurance  
2672 Commissioners or a third-party consultant governing sharing and use of information provided  
2673 pursuant to this chapter consistent with this Subsection (1) that shall:  
2674 (i) specify procedures and protocols regarding the confidentiality and security of  
2675 information shared with the National Association of Insurance Commissioners or a third-party  
2676 consultant pursuant to this chapter, including procedures and protocols for sharing by the  
2677 National Association of Insurance Commissioners with other state regulators from states in  
2678 which the insurance group has domiciled insurers; and  
2679 (ii) provide that the recipient agrees in writing:  
2680 (A) to maintain the confidentiality status of the own risk and solvency assessment  
2681 related documents, materials, or other information; and  
2682 (B) to verify the legal authority to maintain confidentiality;  
2683 (iii) specify that ownership of information shared with the National Association of  
2684 Insurance Commissioners or a third-party consultant pursuant to this chapter remains with the  
2685 commissioner and the National Association of Insurance Commissioners' or a third-party  
2686 consultant's use of the information is subject to the direction of the commissioner;  
2687 (iv) prohibit the National Association of Insurance Commissioners or third-party  
2688 consultant from storing the information shared pursuant to this chapter in a permanent database  
2689 after the underlying analysis is completed;  
2690 (v) require prompt notice to be given to an insurer whose confidential information in  
2691 the possession of the National Association of Insurance Commissioners or a third-party  
2692 consultant pursuant to this chapter is subject to a request or subpoena to the National  
2693 Association of Insurance Commissioners or a third-party consultant for disclosure or  
2694 production;

(vi) require the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter; and

(vii) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(6) The sharing of information and documents by the commissioner pursuant to this chapter may not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.

(7) No waiver of any applicable claim of confidentiality in the documents, proprietary and trade-secret materials or other own risk and solvency assessment related information shall occur as a result of disclosure of such own risk and solvency assessment related information or documents to the commissioner under this section or as a result of sharing as authorized in this chapter.

(8) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter are:

(a) confidential, not public records, and not open to public inspection; and

(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

Section 27. Section **31A-16a-109** is enacted to read:

**31A-16a-109. Sanctions.**

(1) An insurer failing, without just cause, to timely file the own risk and solvency assessment summary report as required in this chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each working day the own risk and solvency assessment summary report is late notwithstanding Section 31A-2-308.

(2) The penalty recovered under Subsection (1) shall be paid into the General Fund. The maximum penalty under this section is \$250,000 notwithstanding Section 31A-2-308. The



commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

Section 28. Section **31A-16a-110** is enacted to read:

**31A-16a-110. Severability.**

If any chapter, section, or subsection of this chapter or the application of any chapter, section, or subsection to any person or circumstance is held invalid, the remainder of the provisions of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.

Section 29. Section **31A-22-612** is amended to read:

**31A-22-612. Conversion privileges for insured former spouse.**

(1) An accident and health insurance policy, which in addition to covering the insured also provides coverage to the spouse of the insured, may not contain a provision for termination of coverage of a spouse covered under the policy, except by entry of a valid decree of divorce or annulment between the parties.

(2) Every policy which contains this type of provision shall provide that upon the entry of the divorce decree the spouse is entitled to have issued an individual policy of accident and health insurance without evidence of insurability, upon application to the company and payment of the appropriate premium. The policy shall provide the coverage being issued which is most nearly similar to the terminated coverage. Probationary or waiting periods in the policy are considered satisfied to the extent the coverage was in force under the prior policy.

(3) When the insurer receives actual notice that the coverage of a spouse is to be terminated because of a divorce or annulment, the insurer shall promptly provide the spouse written notification of the right to obtain individual coverage as provided in Subsection (2), the premium amounts required, and the manner, place, and time in which premiums may be paid. The premium is determined in accordance with the insurer's table of premium rates applicable to the age and class of risk of the persons to be covered and to the type and amount of coverage provided. If the spouse applies and tenders the first monthly premium to the insurer within 30 days after receiving the notice provided by this Subsection (3), the spouse shall receive individual coverage that commences immediately upon termination of coverage under the insured's policy.

(4) This section does not apply to accident and health insurance policies offered on a

2757 group blanket basis or a health benefit plan.

2758 Section 30. Section **31A-22-620** is amended to read:

2759 **31A-22-620. Medicare Supplement Insurance Minimum Standards Act.**

2760 (1) As used in this section:

2761 (a) "Applicant" means:

2762 (i) in the case of an individual Medicare supplement policy, the person who seeks to  
2763 contract for insurance benefits; and

2764 (ii) in the case of a group Medicare supplement policy, the proposed certificate holder.

2765 (b) "Certificate" means any certificate delivered or issued for delivery in this state  
2766 under a group Medicare supplement policy.

2767 (c) "Certificate form" means the form on which the certificate is delivered or issued for  
2768 delivery by the issuer.

2769 (d) "Issuer" includes insurance companies, fraternal benefit societies, health care  
2770 service plans, health maintenance organizations, and any other entity delivering, or issuing for  
2771 delivery in this state, Medicare supplement policies or certificates.

2772 (e) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the  
2773 Social Security Amendments of 1965, as then constituted or later amended.

2774 (f) "Medicare Supplement Policy":

2775 (i) means a group or individual policy of [~~disability~~] health insurance, other than a  
2776 policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42  
2777 U.S.C. [~~Section~~] Sec. 1395 et seq., or an issued policy under a demonstration project specified  
2778 in 42 U.S.C. [~~Section~~] Sec. 1395ss(g)(1), that is advertised, marketed, or designed primarily as  
2779 a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses  
2780 of persons eligible for Medicare; and

2781 (ii) does not include Medicare Advantage plans established under Medicare Part C,  
2782 outpatient prescription drug plans established under Medicare Part D, or any health care  
2783 prepayment plan that provides benefits pursuant to an agreement under Section 1833(a)(1)(A)  
2784 of the Social Security Act.

2785 (g) "Policy form" means the form on which the policy is delivered or issued for  
2786 delivery by the issuer.

2787 (2) (a) Except as otherwise specifically provided, this section applies to:

(i) all Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this section;

(ii) all certificates issued under group Medicare supplement policies, that have been delivered or issued for delivery in this state on or after the effective date of this section; and

(iii) policies or certificates that were in force prior to the effective date of this section, with respect to requirements for benefits, claims payment, and policy reporting practice under Subsection (3)(d), and loss ratios under Subsection (4).

(b) This section does not apply to a policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination of employers and labor unions, for employees or former employees or a combination of employees and former employees, or for members or former members of the labor organizations, or a combination of members and former members of labor organizations.

(c) This section does not prohibit, nor does it apply to insurance policies or health care benefit plans, including group conversion policies, provided to Medicare eligible persons that are not marketed or held out to be Medicare supplement policies or benefit plans.

(3) (a) A Medicare supplement policy or certificate in force in the state may not contain benefits that duplicate benefits provided by Medicare.

(b) Notwithstanding any other provision of law of this state, a Medicare supplement policy or certificate may not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than: "A condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage."

(c) The commissioner shall adopt rules to establish specific standards for policy provisions of Medicare supplement policies and certificates. The standards adopted shall be in addition to and in accordance with applicable laws of this state. A requirement of this title relating to minimum required policy benefits, other than the minimum standards contained in this section, may not apply to Medicare supplement policies and certificates. The standards may include:

(i) terms of renewability;

2819 (ii) initial and subsequent conditions of eligibility;  
2820 (iii) nonduplication of coverage;  
2821 (iv) probationary periods;  
2822 (v) benefit limitations, exceptions, and reductions;  
2823 (vi) elimination periods;  
2824 (vii) requirements for replacement;  
2825 (viii) recurrent conditions; and  
2826 (ix) definitions of terms.

2827 (d) The commissioner shall adopt rules establishing minimum standards for benefits,  
2828 claims payment, marketing practices, compensation arrangements, and reporting practices for  
2829 Medicare supplement policies and certificates.

2830 (e) The commissioner may adopt rules to conform Medicare supplement policies and  
2831 certificates to the requirements of federal law and regulations, including:

2832 (i) requiring refunds or credits if the policies do not meet loss ratio requirements;  
2833 (ii) establishing a uniform methodology for calculating and reporting loss ratios;  
2834 (iii) assuring public access to policies, premiums, and loss ratio information of issuers  
2835 of Medicare supplement insurance;

2836 (iv) establishing a process for approving or disapproving policy forms and certificate  
2837 forms and proposed premium increases;

2838 (v) establishing a policy for holding public hearings prior to approval of premium  
2839 increases;

2840 (vi) establishing standards for Medicare select policies and certificates; and  
2841 (vii) nondiscrimination for genetic testing or genetic information.

2842 (f) The commissioner may adopt rules that prohibit policy provisions not otherwise  
2843 specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or  
2844 unfairly discriminatory to any person insured or proposed to be insured under a Medicare  
2845 supplement policy or certificate.

2846 (4) Medicare supplement policies shall return to policyholders benefits that are  
2847 reasonable in relation to the premium charged. The commissioner shall make rules to establish  
2848 minimum standards for loss ratios of Medicare supplement policies on the basis of incurred  
2849 claims experience, or incurred health care expenses where coverage is provided by a health

2850 maintenance organization on a service basis rather than on a reimbursement basis, and earned  
2851 premiums in accordance with accepted actuarial principles and practices.

2852 (5) (a) To provide for full and fair disclosure in the sale of Medicare supplement  
2853 policies, a Medicare supplement policy or certificate may not be delivered in this state unless  
2854 an outline of coverage is delivered to the applicant at the time application is made.

2855 (b) The commissioner shall prescribe the format and content of the outline of coverage  
2856 required by Subsection (5)(a).

2857 (c) For purposes of this section, "format" means style arrangements and overall  
2858 appearance, including such items as the size, color, and prominence of type and arrangement of  
2859 text and captions. The outline of coverage shall include:

2860 (i) a description of the principal benefits and coverage provided in the policy;

2861 (ii) a statement of the renewal provisions, including any reservation by the issuer of a  
2862 right to change premiums; and disclosure of the existence of any automatic renewal premium  
2863 increases based on the policyholder's age; and

2864 (iii) a statement that the outline of coverage is a summary of the policy issued or  
2865 applied for and that the policy should be consulted to determine governing contractual  
2866 provisions.

2867 (d) The commissioner may make rules for captions or notice if the commissioner finds  
2868 that the rules are:

2869 (i) in the public interest; and

2870 (ii) designed to inform prospective insureds that particular insurance coverages are not  
2871 Medicare supplement coverages, for all accident and health insurance policies sold to persons  
2872 eligible for Medicare, other than:

2873 (A) a medicare supplement policy; or

2874 (B) a disability income policy.

2875 (e) The commissioner may prescribe by rule a standard form and the contents of an  
2876 informational brochure for persons eligible for Medicare, that is intended to improve the  
2877 buyer's ability to select the most appropriate coverage and improve the buyer's understanding of  
2878 Medicare. Except in the case of direct response insurance policies, the commissioner may  
2879 require by rule that the informational brochure be provided concurrently with delivery of the  
2880 outline of coverage to any prospective insureds eligible for Medicare. With respect to direct

response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.

(f) The commissioner may adopt reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and health policies, subscriber contracts, or certificates by persons eligible for Medicare.

(6) Notwithstanding Subsection (1), Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached to the front page, stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

(7) Every issuer of Medicare supplement insurance policies or certificates in this state shall provide a copy of any Medicare supplement advertisement intended for use in this state, whether through written or broadcast medium, to the commissioner for review.

(8) The commissioner may adopt rules to conform Medicare and Medicare supplement policies and certificates to the marketing requirements of federal law and regulation.

Section 31. Section **31A-23a-102** is amended to read:

**31A-23a-102. Definitions.**

As used in this chapter:

(1) "Bail bond producer" is as defined in Section 31A-35-102.

(2) "Designated home state" means the state or territory of the United States or the District of Columbia:

(a) in which an insurance producer, limited lines producer, consultant, managing general agent, or reinsurance intermediary licensee does not maintain the licensee's principal:

(i) place of residence; or

(ii) place of business;

(b) if the resident state, territory, or District of Columbia of the licensee does not license for the line of authority sought, the licensee has qualified for the license as if the person were a resident in the state, territory, or District of Columbia described in Subsection (2)(a), including an applicable:

2912 (i) examination requirement;  
2913 (ii) fingerprint background check requirement; and  
2914 (iii) continuing education requirement; and  
2915 (c) the licensee has designated the state, territory, or District of Columbia as the  
2916 designated home state.  
2917 ~~[(2)]~~ (3) "Home state" means:  
2918 (a) a state or territory of the United States or the District of Columbia in which an  
2919 insurance producer, limited lines producer, consultant, managing general agent, or reinsurance  
2920 intermediary licensee:  
2921 ~~[(a)]~~ (i) maintains the ~~[insurance producer's]~~ licensee's principal:  
2922 ~~[(i)]~~ (A) place of residence; or  
2923 ~~[(ii)]~~ (B) place of business; and  
2924 ~~[(b)]~~ (ii) is licensed to act as ~~[an insurance producer]~~ a resident licensee; or  
2925 (b) if the resident state, territory, or the District of Columbia described in Subsection  
2926 (3)(a) does not license for the line of authority sought, a state, territory, or the District of  
2927 Columbia:  
2928 (i) in which the licensee is licensed;  
2929 (ii) in which the licensee is in good standing; and  
2930 (iii) that the licensee has designated as the licensee's designated home state.  
2931 ~~[(3)]~~ (4) "Insurer" is as defined in Section 31A-1-301, except that the following  
2932 persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:  
2933 (a) a risk retention group as defined in:  
2934 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;  
2935 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and  
2936 (iii) Chapter 15, Part 2, Risk Retention Groups Act;  
2937 (b) a residual market pool;  
2938 (c) a joint underwriting authority or association; and  
2939 (d) a captive insurer.  
2940 ~~[(4)]~~ (5) "License" is defined in Section 31A-1-301.  
2941 ~~[(5)]~~ (6) (a) "Managing general agent" means a person that:  
2942 (i) manages all or part of the insurance business of an insurer, including the

2943 management of a separate division, department, or underwriting office;  
2944 (ii) acts as an agent for the insurer whether it is known as a managing general agent,  
2945 manager, or other similar term;  
2946 (iii) produces and underwrites an amount of gross direct written premium equal to, or  
2947 more than, 5% of the policyholder surplus as reported in the last annual statement of the insurer  
2948 in any one quarter or year:  
2949 (A) with or without the authority;  
2950 (B) separately or together with an affiliate; and  
2951 (C) directly or indirectly; and  
2952 (iv) (A) adjusts or pays claims in excess of an amount determined by the  
2953 commissioner; or  
2954 (B) negotiates reinsurance on behalf of the insurer.  
2955 (b) Notwithstanding Subsection [~~(5)~~] (6)(a), the following persons may not be  
2956 considered as managing general agent for the purposes of this chapter:  
2957 (i) an employee of the insurer;  
2958 (ii) a United States manager of the United States branch of an alien insurer;  
2959 (iii) an underwriting manager that, pursuant to contract:  
2960 (A) manages all the insurance operations of the insurer;  
2961 (B) is under common control with the insurer;  
2962 (C) is subject to Chapter 16, Insurance Holding Companies; and  
2963 (D) is not compensated based on the volume of premiums written; and  
2964 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal  
2965 insurer or inter-insurance exchange under powers of attorney.  
2966 [~~(6)~~] (7) "Negotiate" means the act of conferring directly with or offering advice  
2967 directly to a purchaser or prospective purchaser of a particular contract of insurance concerning  
2968 a substantive benefit, term, or condition of the contract if the person engaged in that act:  
2969 (a) sells insurance; or  
2970 (b) obtains insurance from insurers for purchasers.  
2971 [~~(7)~~] (8) "Reinsurance intermediary" means:  
2972 (a) a reinsurance intermediary-broker; or  
2973 (b) a reinsurance intermediary-manager.



2974           ~~[(8)]~~ (9) "Reinsurance intermediary-broker" means a person other than an officer or  
2975 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or  
2976 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority  
2977 or power to bind reinsurance on behalf of the insurer.

2978           ~~[(9)]~~ (10) (a) "Reinsurance intermediary-manager" means a person who:  
2979           (i) has authority to bind or who manages all or part of the assumed reinsurance  
2980 business of a reinsurer, including the management of a separate division, department, or  
2981 underwriting office; and  
2982           (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance  
2983 intermediary-manager, manager, or other similar term.

2984           (b) Notwithstanding Subsection ~~[(9)]~~ (10)(a), the following persons may not be  
2985 considered reinsurance intermediary-managers for the purpose of this chapter with respect to  
2986 the reinsurer:

2987           (i) an employee of the reinsurer;  
2988           (ii) a United States manager of the United States branch of an alien reinsurer;  
2989           (iii) an underwriting manager that, pursuant to contract:  
2990           (A) manages all the reinsurance operations of the reinsurer;  
2991           (B) is under common control with the reinsurer;  
2992           (C) is subject to Chapter 16, Insurance Holding Companies; and  
2993           (D) is not compensated based on the volume of premiums written; and  
2994           (iv) the manager of a group, association, pool, or organization of insurers that:  
2995           (A) engage in joint underwriting or joint reinsurance; and  
2996           (B) are subject to examination by the insurance commissioner of the state in which the  
2997 manager's principal business office is located.

2998           ~~[(10)]~~ (11) "Resident" is as defined by rule made by the commissioner in accordance  
2999 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3000           ~~[(11)]~~ (12) "Search" means a license subline of authority in conjunction with the title  
3001 insurance line of authority that allows a person to issue title insurance commitments or policies  
3002 on behalf of a title insurer.

3003           ~~[(12)]~~ (13) "Sell" means to exchange a contract of insurance:

3004           (a) by any means;

3005 (b) for money or its equivalent; and  
3006 (c) on behalf of an insurance company.  
3007 ~~[(13)]~~ (14) "Solicit" means:  
3008 (a) attempting to sell insurance;  
3009 (b) asking or urging a person to apply for:  
3010 (i) a particular kind of insurance; and  
3011 (ii) insurance from a particular insurance company;  
3012 (c) advertising insurance, including advertising for the purpose of obtaining leads for  
3013 the sale of insurance; or  
3014 (d) holding oneself out as being in the insurance business.  
3015 ~~[(14)]~~ (15) "Terminate" means:  
3016 (a) the cancellation of the relationship between:  
3017 (i) an individual licensee or agency licensee and a particular insurer; or  
3018 (ii) an individual licensee and a particular agency licensee; or  
3019 (b) the termination of:  
3020 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf  
3021 of a particular insurance company; or  
3022 (ii) an individual licensee's authority to transact insurance on behalf of a particular  
3023 agency licensee.  
3024 ~~[(15)]~~ (16) "Title marketing representative" means a person who:  
3025 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:  
3026 (i) title insurance; or  
3027 (ii) escrow services; and  
3028 (b) does not have a search or escrow license as provided in Section 31A-23a-106.  
3029 ~~[(16)]~~ (17) "Uniform application" means the version of the National Association of  
3030 Insurance Commissioners' uniform application for resident and nonresident producer licensing  
3031 at the time the application is filed.  
3032 ~~[(17)]~~ (18) "Uniform business entity application" means the version of the National  
3033 Association of Insurance Commissioners' uniform business entity application for resident and  
3034 nonresident business entities at the time the application is filed.  
3035 Section 32. Section **31A-23a-113** is amended to read:

**31A-23a-113. License lapse and voluntary surrender.**

(1) (a) A license issued under this chapter, including a line of authority, shall lapse if the licensee fails to:

(i) pay when due a fee under Section 31A-3-103;

(ii) complete continuing education requirements under Section 31A-23a-202 before submitting the license renewal application;

(iii) submit a completed renewal application as required by Section 31A-23a-104;

(iv) submit additional documentation required to complete the licensing process as related to a specific license type or line of authority; or

(v) maintain an active license in a licensee's home state if the licensee is a nonresident licensee.

(b) (i) A licensee whose license lapses may request reinstatement of the license and line of authority no more than one year after the day on which the license lapses.

(ii) A licensee whose license lapses due to the following may request an action described in Subsection (1)(b)[~~(ii)~~](iii):

(A) military service;

(B) voluntary service for a period of time designated by the person for whom the licensee provides voluntary service; or

(C) some other extenuating circumstances, such as long-term medical disability.

[~~(ii)~~] (iii) A licensee described in Subsection (1)(b)[~~(i)~~](ii) may request:

(A) reinstatement of the license and line of authority no later than one year after the day on which the license lapses; and

(B) waiver of any of the following imposed for failure to comply with renewal procedures:

(I) an examination requirement;

(II) reinstatement fees set under Section 31A-3-103;

(III) continuing education requirements; or

(IV) other sanction imposed for failure to comply with renewal procedures.

(2) If a license or line of authority issued under this chapter is voluntarily surrendered, the license or line of authority may be reinstated:

(a) during the license period in which the license or line of authority is voluntarily

3067 surrendered; and

3068 (b) no later than one year after the day on which the license or line of authority is  
3069 voluntarily surrendered.

3070 Section 33. Section **31A-23a-402** is amended to read:

3071 **31A-23a-402. Unfair marketing practices -- Communication -- Unfair**  
3072 **discrimination -- Coercion or intimidation -- Restriction on choice.**

3073 (1) (a) (i) Any of the following may not make or cause to be made any communication  
3074 that contains false or misleading information, relating to an insurance product or contract, any  
3075 insurer, or any licensee under this title, including information that is false or misleading  
3076 because it is incomplete:

3077 (A) a person who is or should be licensed under this title;

3078 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

3079 (C) a person whose primary interest is as a competitor of a person licensed under this  
3080 title; and

3081 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

3082 (ii) As used in this Subsection (1), "false or misleading information" includes:

3083 (A) assuring the nonobligatory payment of future dividends or refunds of unused  
3084 premiums in any specific or approximate amounts, but reporting fully and accurately past  
3085 experience is not false or misleading information; and

3086 (B) with intent to deceive a person examining it:

3087 (I) filing a report;

3088 (II) making a false entry in a record; or

3089 (III) wilfully refraining from making a proper entry in a record.

3090 (iii) A licensee under this title may not:

3091 (A) use any business name, slogan, emblem, or related device that is misleading or  
3092 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee  
3093 already in business; or

3094 (B) use any name, advertisement or other insurance promotional material that would  
3095 cause a reasonable person to mistakenly believe that a state or federal government agency,  
3096 including the Health Insurance Exchange, also called the "Utah Health Exchange[;]" or  
3097 "Avenue H." created in Section 63M-1-2504, the Comprehensive Health Insurance Pool

3098 created in Chapter 29, Comprehensive Health Insurance Pool Act, and the Children's Health  
3099 Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act:

3100 (I) is responsible for the insurance sales activities of the person;

3101 (II) stands behind the credit of the person;

3102 (III) guarantees any returns on insurance products of or sold by the person; or

3103 (IV) is a source of payment of any insurance obligation of or sold by the person.

3104 (iv) A person who is not an insurer may not assume or use any name that deceptively  
3105 implies or suggests that person is an insurer.

3106 (v) A person other than persons licensed as health maintenance organizations under  
3107 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to  
3108 itself.

3109 (b) A licensee's violation creates a rebuttable presumption that the violation was also  
3110 committed by the insurer if:

3111 (i) the licensee under this title distributes cards or documents, exhibits a sign, or  
3112 publishes an advertisement that violates Subsection (1)(a), with reference to a particular  
3113 insurer:

3114 (A) that the licensee represents; or

3115 (B) for whom the licensee processes claims; and

3116 (ii) the cards, documents, signs, or advertisements are supplied or approved by that  
3117 insurer.

3118 (2) (a) A title insurer, individual title insurance producer, or agency title insurance  
3119 producer or any officer or employee of the title insurer, individual title insurance producer, or  
3120 agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give,  
3121 directly or indirectly, as an inducement to obtaining any title insurance business:

3122 (i) any rebate, reduction, or abatement of any rate or charge made incident to the  
3123 issuance of the title insurance;

3124 (ii) any special favor or advantage not generally available to others;

3125 (iii) any money or other consideration, except if approved under Section 31A-2-405; or

3126 (iv) material inducement.

3127 (b) "Charge made incident to the issuance of the title insurance" includes escrow  
3128 charges, and any other services that are prescribed in rule by the Title and Escrow Commission

3129 after consultation with the commissioner and subject to Section 31A-2-404.

3130 (c) An insured or any other person connected, directly or indirectly, with the  
3131 transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to  
3132 in Subsection (2)(a), including:

3133 (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices  
3134 and Licensing Act;

3135 (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices  
3136 Act;

3137 (iii) a builder;

3138 (iv) an attorney; or

3139 (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

3140 (3) (a) An insurer may not unfairly discriminate among policyholders by charging  
3141 different premiums or by offering different terms of coverage, except on the basis of  
3142 classifications related to the nature and the degree of the risk covered or the expenses involved.

3143 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons  
3144 insured under a group, blanket, or franchise policy, and the terms of those policies are not  
3145 unfairly discriminatory merely because they are more favorable than in similar individual  
3146 policies.

3147 (4) (a) This Subsection (4) applies to:

3148 (i) a person who is or should be licensed under this title;

3149 (ii) an employee of that licensee or person who should be licensed;

3150 (iii) a person whose primary interest is as a competitor of a person licensed under this  
3151 title; and

3152 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

3153 (b) A person described in Subsection (4)(a) may not commit or enter into any  
3154 agreement to participate in any act of boycott, coercion, or intimidation that:

3155 (i) tends to produce:

3156 (A) an unreasonable restraint of the business of insurance; or

3157 (B) a monopoly in that business; or

3158 (ii) results in an applicant purchasing or replacing an insurance contract.

3159 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an

insurer or licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract.

(ii) A person requiring coverage may reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

(b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.

(6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of agency to the principal on demand.

(b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the commissioner on demand.

(8) (a) A person may not engage in an unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule, after a finding that the method of competition, the act, or the practice:

(i) is misleading;

(ii) is deceptive;

(iii) is unfairly discriminatory;

(iv) provides an unfair inducement; or

(v) unreasonably restrains competition.

(b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an unfair method of competition or unfair or deceptive act or practice after a finding that the method of competition, the act, or the practice:

(i) is misleading;

- 3191 (ii) is deceptive;
- 3192 (iii) is unfairly discriminatory;
- 3193 (iv) provides an unfair inducement; or
- 3194 (v) unreasonably restrains competition.

3195 Section 34. Section **31A-23b-206** is amended to read:

3196 **31A-23b-206. Continuing education requirements.**

3197 (1) The commissioner shall, by rule, prescribe continuing education requirements for a  
3198 navigator.

3199 (2) (a) The commissioner may not require a degree from an institution of higher  
3200 education as part of continuing education.

3201 (b) The commissioner may state a continuing education requirement in terms of hours  
3202 of instruction received in:

- 3203 (i) accident and health insurance;
- 3204 (ii) qualification for and enrollment in public programs;
- 3205 (iii) qualification for and enrollment in premium subsidies;
- 3206 (iv) cultural competency;
- 3207 (v) conflict of interest standards; and
- 3208 (vi) other exchange functions.

3209 (3) (a) For a navigator line of authority, continuing education requirements shall  
3210 require:

3211 (i) that a licensee complete 12 credit hours of continuing education for every one-year  
3212 licensing period;

3213 (ii) that at least two of the 12 credit hours described in Subsection (3)(a)(i) be ethics  
3214 courses;

3215 (iii) that at least one of the 12 credit hours described in Subsection (3)(a)(i) be training  
3216 on defined contribution arrangements and the use of the small employer health insurance  
3217 exchange; and

3218 (iv) that a licensee complete the annual navigator training and certification program  
3219 developed by the Centers for Medicare and Medicaid Services.

3220 (b) For a certified application counselor, the continuing education requirements shall  
3221 require:



3222 (i) that a licensee complete six credit hours of continuing education for every one-year  
3223 licensing period;

3224 (ii) that at least two of the six credit hours described in Subsection (3)(b)(i) be on  
3225 ethics courses;

3226 (iii) that at least one of the six credit hours described in Subsection (3)(b)(i) be training  
3227 on defined contribution arrangements and the use of the small employer health insurance  
3228 exchange; and

3229 (iv) that a licensee complete the annual certified application counselor training and  
3230 certification program developed by the Centers for Medicare and Medicaid Services.

3231 (c) An hour of continuing education in accordance with Subsections (3)(a)(i) and (b)(i)  
3232 may be obtained through:

3233 (i) classroom attendance;

3234 (ii) home study;

3235 (iii) watching a video recording; or

3236 (iv) another method approved by rule.

3237 (d) A licensee may obtain continuing education hours at any time during the one-year  
3238 license period.

3239 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
3240 commissioner shall, by rule, authorize one or more continuing education providers, including a  
3241 state or national professional producer or consultant associations, to:

3242 (i) offer a qualified program on a geographically accessible basis; and

3243 (ii) collect a reasonable fee for funding and administration of a continuing education  
3244 program, subject to the review and approval of the commissioner.

3245 (4) The commissioner shall approve a continuing education provider or a continuing  
3246 education course that satisfies the requirements of this section.

3247 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
3248 commissioner shall by rule establish the procedures for continuing education provider  
3249 registration and course approval.

3250 (6) This section applies only to a navigator who is a natural person.

3251 (7) A navigator shall keep documentation of completing the continuing education  
3252 requirements of this section for [~~two years~~] one year after the end of the [~~two-year~~] one-year

3253 licensing period to which the continuing education applies.

3254 Section 35. Section **31A-25-302.5** is enacted to read:

3255 **31A-25-302.5. Place of business and residence address.**

3256 (1) A third party administrator licensed under this chapter shall register and maintain  
3257 with the commissioner:

3258 (a) the address and one or more telephone numbers of the licensee's principal place of  
3259 business;

3260 (b) a valid business email address at which the commissioner may contact the licensee;  
3261 and

3262 (c) if the licensee is an individual, the licensee's residence address and telephone  
3263 number.

3264 (2) A licensee shall notify the commissioner within 30 days of a change of any of the  
3265 following required to be registered with the commissioner under this section:

3266 (a) an address;

3267 (b) a telephone number; or

3268 (c) a business email address.

3269 Section 36. Section **31A-27a-116** is amended to read:

3270 **31A-27a-116. Financial reporting.**

3271 (1) (a) The receiver shall comply with all requirements for receivership financial  
3272 reporting in this section and as may be specified by the commissioner by rule or ordered by the  
3273 court within:

3274 (i) 180 days after the day on which the receivership court enters an order of  
3275 receivership; and

3276 (ii) 45 days following each calendar quarter after the period specified in Subsection  
3277 (1)(a)(i).

3278 (b) The rule described in this Subsection (1) shall:

3279 (i) comply with this section;

3280 (ii) be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
3281 Act; and

3282 (iii) require the receiver to file any financial report with the receivership court in  
3283 addition to any other person specified in the rule.

- 3284 (c) A financial report shall include, at a minimum, a statement of:
- 3285 (i) the assets and liabilities of the insurer;
- 3286 (ii) the changes in those assets and liabilities; and
- 3287 (iii) all funds received or disbursed by the receiver during that reporting period.
- 3288 (d) The receiver may qualify a financial report or provide notes to the financial
- 3289 statement for further explanation.
- 3290 (e) The receivership court may order the receiver to provide any additional information
- 3291 as the receivership court considers appropriate.
- 3292 (2) Each affected guaranty association shall file one or more reports with the liquidator:
- 3293 (a) (i) within 180 days after the day on which the receivership court enters an order of
- 3294 liquidation; and
- 3295 (ii) (A) within 45 days following each calendar quarter after the period described in
- 3296 Subsection (2)(a)(i); or
- 3297 (B) at an interval:
- 3298 (I) agreed to between the liquidator and the affected guaranty association; or
- 3299 (II) required by the receivership court; and
- 3300 (b) in no event less than annually.
- 3301 (3) For good cause shown, the receivership court may grant:
- 3302 (a) relief for an extension or modification of time to comply with Subsection (1) or (2);
- 3303 or
- 3304 (b) such other relief as may be appropriate.
- 3305 Section 37. Section **31A-28-213** is amended to read:
- 3306 **31A-28-213. Miscellaneous provisions.**
- 3307 (1) (a) Any person who has a claim against an insurer, whether or not the insurer is a
- 3308 member insurer, under any provision in an insurance policy, other than a policy of an insolvent
- 3309 insurer that is also a covered claim, is required to first exhaust that person's right under that
- 3310 person's policy.
- 3311 (b) Any amount payable on a covered claim under this part under an insurance policy is
- 3312 reduced by the amount of any recovery under the insurance policy described in Subsection
- 3313 (1)(a).
- 3314 (c) (i) Except as provided in Subsection (1)(c)(ii) a person having a claim that may be

3315 recovered under more than one insurance guaranty association or its equivalent shall first seek  
3316 recovery from the association of the place of residence of the insured.

3317 (ii) If the person's claim is:

3318 (A) a first-party claim for damage to property with a permanent location, the person  
3319 shall seek recovery first from the association of the location of the property; and

3320 (B) a workers' compensation claim, the person shall seek recovery first from the  
3321 association of the residence of the claimant.

3322 (iii) Any recovery under this part shall be reduced by the amount of recovery from any  
3323 other insurance guaranty association or its equivalent.

3324 (2) An insurer may not exercise any right of subrogation against an insolvent insurer's  
3325 insured if exercise of the right would require the insured, or a guaranty fund under Chapter 28,  
3326 Guaranty Associations, to pay an amount the insolvent insurer is obligated to pay under an  
3327 insurance policy issued to the insured.

3328 ~~[(2)]~~ (3) This part may not be construed to reduce the liability for unpaid assessments of  
3329 the insureds of an impaired or insolvent insurer operating under a plan with assessment  
3330 liability.

3331 ~~[(3)]~~ (4) (a) Records shall be kept of all negotiations and meetings in which the  
3332 association or its representatives are involved to discuss the activities of the association in  
3333 carrying out the association's powers and duties under Section 31A-28-207. Records of these  
3334 negotiations or meetings shall be made public only:

3335 (i) upon the termination of a liquidation, rehabilitation, or conservation proceeding  
3336 involving the insolvent insurer;

3337 (ii) the termination of the insolvency of the insurer; or

3338 (iii) the order of a court of competent jurisdiction.

3339 (b) This Subsection ~~[(3)]~~ (4) does not limit the duty of the association to render a report  
3340 of its activities under Section 31A-28-214.

3341 ~~[(4)]~~ (5) For the purpose of carrying out its obligations under this part, the association  
3342 is considered to be a creditor of the insolvent insurer, except to the extent of any amounts the  
3343 association is entitled as subrogee under Section 31A-28-207.

3344 ~~[(5)]~~ (6) (a) Before the termination of any liquidation, rehabilitation, or conservation  
3345 proceeding, the court may take into consideration the contributions of the respective parties,

3346 including:

3347 (i) the association;

3348 (ii) the shareholders;

3349 (iii) the policyowners of the insolvent insurer; and

3350 (iv) any other party with a bona fide interest, in making an equitable distribution of the  
3351 ownership rights of the insolvent insurer.

3352 (b) In making the determination described in Subsection [~~(5)~~] (6)(a), the court shall  
3353 consider the welfare of the policyholders of the continuing or successor insurer.

3354 (c) A distribution to stockholders, if any, of an insolvent insurer may not be made until  
3355 the total amount of valid claims of the association with interest on those claims for funds  
3356 expended in carrying out its powers and duties under Section 31A-28-207 regarding this  
3357 insurer have been fully recovered by the association.

3358 [~~(6)~~] (7) A rehabilitator, liquidator, or conservator appointed under any section of this  
3359 part may recover on behalf of the insurer for excessive distributions paid to affiliates, pursuant  
3360 to Section 31A-27a-502.

3361 Section 38. Section **31A-37-102** is amended to read:

3362 **31A-37-102. Definitions.**

3363 As used in this chapter:

3364 (1) "Affiliated company" means a business entity that because of common ownership,  
3365 control, operation, or management is in the same corporate or limited liability company system  
3366 as:

3367 (a) a parent;

3368 (b) an industrial insured; or

3369 (c) a member organization.

3370 (2) "Alien captive insurance company" means an insurer:

3371 (a) formed to write insurance business for a parent or affiliate of the insurer; and

3372 (b) licensed pursuant to the laws of an alien jurisdiction that imposes statutory or  
3373 regulatory standards:

3374 (i) on a business entity transacting the business of insurance in the alien jurisdiction;

3375 and

3376 (ii) in a form acceptable to the commissioner.

3377 (3) "Association" means a legal association of two or more persons that has been in  
3378 continuous existence for at least one year if:

3379 (a) the association or its member organizations:

3380 (i) own, control, or hold with power to vote all of the outstanding voting securities of  
3381 an association captive insurance company incorporated as a stock insurer; or

3382 (ii) have complete voting control over an association captive insurance company  
3383 incorporated as a mutual insurer;

3384 (b) the association's member organizations collectively constitute all of the subscribers  
3385 of an association captive insurance company formed as a reciprocal insurer; or

3386 (c) the association or its member organizations have complete voting control over an  
3387 association captive insurance company formed as a limited liability company.

3388 (4) "Association captive insurance company" means a business entity that insures risks  
3389 of:

3390 (a) a member organization of the association;

3391 (b) an affiliate of a member organization of the association; and

3392 (c) the association.

3393 (5) "Branch business" means an insurance business transacted by a branch captive  
3394 insurance company in this state.

3395 (6) "Branch captive insurance company" means an alien captive insurance company  
3396 that has a certificate of authority from the commissioner to transact the business of insurance in  
3397 this state through a business unit with a principal place of business in this state.

3398 (7) "Branch operation" means a business operation of a branch captive insurance  
3399 company in this state.

3400 (8) "Captive insurance company" means any of the following formed or holding a  
3401 certificate of authority under this chapter:

3402 (a) a branch captive insurance company;

3403 (b) a pure captive insurance company;

3404 (c) an association captive insurance company;

3405 (d) a sponsored captive insurance company;

3406 (e) an industrial insured captive insurance company;

3407 ~~[(f) a captive reinsurance company;]~~

3408 ~~[(g)]~~ (f) a special purpose captive insurance company; or  
3409 ~~[(h)]~~ (g) a special purpose financial captive insurance company.  
3410 ~~[(9) "Captive reinsurance company" means a reinsurer that is:]~~  
3411 ~~[(a) formed or has a certificate of authority pursuant to this chapter;]~~  
3412 ~~[(b) wholly owned by a qualifying reinsurer parent company; and]~~  
3413 ~~[(c) a stock corporation.]~~  
3414 ~~[(10)]~~ (9) "Common ownership and control" means that two or more captive insurance  
3415 companies are owned or controlled by the same person or group of persons as follows:  
3416 (a) in the case of a captive insurance company that is a stock corporation, the direct or  
3417 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;  
3418 (b) in the case of a captive insurance company that is a mutual corporation, the direct  
3419 or indirect ownership of 80% or more of the surplus and the voting power of the mutual  
3420 corporation;  
3421 (c) in the case of a captive insurance company that is a limited liability company, the  
3422 direct or indirect ownership by the same member or members of 80% or more of the  
3423 membership interests in the limited liability company; or  
3424 (d) in the case of a sponsored captive insurance company, a protected cell is a separate  
3425 captive insurance company owned and controlled by the protected cell's participant, only if:  
3426 (i) the participant is the only participant with respect to the protected cell; and  
3427 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored  
3428 captive insurance company through common ownership and control.  
3429 ~~[(11)]~~ (10) "Commissioner" means ~~[the]~~ Utah's Insurance Commissioner or the  
3430 commissioner's designee.  
3431 ~~[(12)]~~ (11) "Consolidated debt to total capital ratio" means the ratio of Subsection  
3432 ~~[(12)]~~ (11)(a) to (b).  
3433 (a) This Subsection ~~[(12)]~~ (11)(a) is an amount equal to the sum of all debts and hybrid  
3434 capital instruments including:  
3435 (i) all borrowings from depository institutions;  
3436 (ii) all senior debt;  
3437 (iii) all subordinated debts;  
3438 (iv) all trust preferred shares; and

3439 (v) all other hybrid capital instruments that are not included in the determination of  
3440 consolidated GAAP net worth issued and outstanding.

3441 (b) This Subsection [~~(12)~~] (11)(b) is an amount equal to the sum of:

3442 (i) total capital consisting of all debts and hybrid capital instruments as described in  
3443 Subsection [~~(12)~~] (11)(a); and

3444 (ii) shareholders' equity determined in accordance with generally accepted accounting  
3445 principles for reporting to the United States Securities and Exchange Commission.

3446 [~~(13)~~] (12) "Consolidated GAAP net worth" means the consolidated shareholders' or  
3447 members' equity determined in accordance with generally accepted accounting principles for  
3448 reporting to the United States Securities and Exchange Commission.

3449 [~~(14)~~] (13) "Controlled unaffiliated business" means a business entity:

3450 (a) (i) in the case of a pure captive insurance company, that is not in the corporate or  
3451 limited liability company system of a parent or the parent's affiliate; or

3452 (ii) in the case of an industrial insured captive insurance company, that is not in the  
3453 corporate or limited liability company system of an industrial insured or an affiliated company  
3454 of the industrial insured;

3455 (b) (i) in the case of a pure captive insurance company, that has a contractual  
3456 relationship with a parent or affiliate; or

3457 (ii) in the case of an industrial insured captive insurance company, that has a  
3458 contractual relationship with an industrial insured or an affiliated company of the industrial  
3459 insured; and

3460 (c) whose risks are managed by one of the following in accordance with Subsection  
3461 31A-37-106(1)[~~(k)~~](j):

3462 (i) a pure captive insurance company; or

3463 (ii) an industrial insured captive insurance company.

3464 [~~(15)~~] (14) "Department" means the Insurance Department.

3465 [~~(16)~~] (15) "Industrial insured" means an insured:

3466 (a) that produces insurance:

3467 (i) by the services of a full-time employee acting as a risk manager or insurance  
3468 manager; or

3469 (ii) using the services of a regularly and continuously qualified insurance consultant;



3470 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;

3471 and

3472 (c) that has at least 25 full-time employees.

3473 [~~(17)~~] (16) "Industrial insured captive insurance company" means a business entity

3474 that:

3475 (a) insures risks of the industrial insureds that comprise the industrial insured group;

3476 and

3477 (b) may insure the risks of:

3478 (i) an affiliated company of an industrial insured; or

3479 (ii) a controlled unaffiliated business of:

3480 (A) an industrial insured; or

3481 (B) an affiliated company of an industrial insured.

3482 [~~(18)~~] (17) "Industrial insured group" means:

3483 (a) a group of industrial insureds that collectively:

3484 (i) own, control, or hold with power to vote all of the outstanding voting securities of

3485 an industrial insured captive insurance company incorporated or organized as a limited liability

3486 company as a stock insurer; or

3487 (ii) have complete voting control over an industrial insured captive insurance company

3488 incorporated or organized as a limited liability company as a mutual insurer;

3489 (b) a group that is:

3490 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. [~~Section~~]

3491 Sec. 3901 et seq., as amended, as a corporation or other limited liability association; and

3492 (ii) taxable under this title as a:

3493 (A) stock corporation; or

3494 (B) mutual insurer; or

3495 (c) a group that has complete voting control over an industrial captive insurance

3496 company formed as a limited liability company.

3497 [~~(19)~~] (18) "Member organization" means a person that belongs to an association.

3498 [~~(20)~~] (19) "Parent" means a person that directly or indirectly owns, controls, or holds

3499 with power to vote more than 50% of:

3500 (a) the outstanding voting securities of a pure captive insurance company; or

3501 (b) the pure captive insurance company, if the pure captive insurance company is  
 3502 formed as a limited liability company.

3503 ~~[(21)]~~ (20) "Participant" means an entity that is insured by a sponsored captive  
 3504 insurance company:

3505 (a) if the losses of the participant are limited through a participant contract to the assets  
 3506 of a protected cell; and

3507 (b)(i) the entity is permitted to be a participant under Section 31A-37-403; or

3508 (ii) the entity is an affiliate of an entity permitted to be a participant under Section  
 3509 31A-37-403.

3510 ~~[(22)]~~ (21) "Participant contract" means a contract by which a sponsored captive  
 3511 insurance company:

3512 (a) insures the risks of a participant; and

3513 (b) limits the losses of the participant to the assets of a protected cell.

3514 ~~[(23)]~~ (22) "Protected cell" means a separate account established and maintained by a  
 3515 sponsored captive insurance company for one participant.

3516 ~~[(24)]~~ (23) "Pure captive insurance company" means a business entity that insures risks  
 3517 of a parent or affiliate of the business entity.

3518 ~~[(25) "Qualifying reinsurer parent company" means a reinsurer:]~~

3519 ~~[(a) authorized to write reinsurance by this state; and]~~

3520 ~~[(b) that has:]~~

3521 ~~[(i) a consolidated GAAP net worth of not less than \$500,000,000; and]~~

3522 ~~[(ii) a consolidated debt to total capital ratio not greater than .50.]~~

3523 ~~[(26)]~~ (24) "Special purpose financial captive insurance company" is as defined in  
 3524 Section 31A-37a-102.

3525 ~~[(27)]~~ (25) "Sponsor" means an entity that:

3526 (a) meets the requirements of Section 31A-37-402; and

3527 (b) is approved by the commissioner to:

3528 (i) provide all or part of the capital and surplus required by applicable law in an amount  
 3529 of not less than \$350,000, which amount the commissioner may increase by order if the  
 3530 commissioner considers it necessary; and

3531 (ii) organize and operate a sponsored captive insurance company.

3532           ~~[(28)]~~ (26) "Sponsored captive insurance company" means a captive insurance  
3533 company:

3534           (a) in which the minimum capital and surplus required by applicable law is provided by  
3535 one or more sponsors;

3536           (b) that is formed or holding a certificate of authority under this chapter;

3537           (c) that insures the risks of a separate participant through the contract; and

3538           (d) that segregates each participant's liability through one or more protected cells.

3539           ~~[(29)]~~ (27) "Treasury rates" means the United States Treasury strip asked yield as  
3540 published in the Wall Street Journal as of a balance sheet date.

3541           Section 39. Section **31A-37-106** is amended to read:

3542           **31A-37-106. Authority to make rules -- Authority to issue orders.**

3543           (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
3544 commissioner may adopt rules to:

3545           (a) determine circumstances under which a branch captive insurance company is not  
3546 required to be a pure captive insurance company;

3547           (b) require a statement, document, or information that a captive insurance company  
3548 shall provide to the commissioner to obtain a certificate of authority;

3549           (c) determine a factor a captive insurance company shall provide evidence of under  
3550 Subsection 31A-37-202(4)(c);

3551           (d) prescribe one or more capital requirements for a captive insurance company in  
3552 addition to those required under Section 31A-37-204 based on the type, volume, and nature of  
3553 insurance business transacted by the captive insurance company;

3554           ~~[(e) establish:]~~

3555           ~~[(i) the amount of capital or surplus required to be retained under Subsection~~  
3556 ~~31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance~~  
3557 ~~company; or]~~

3558           ~~[(ii) a formula to determine the amount described in Subsection 31A-37-205(4);]~~

3559           ~~[(f)]~~ (e) waive or modify a requirement for public notice and hearing for the following  
3560 by a captive insurance company:

3561           (i) merger;

3562           (ii) consolidation;

3563 (iii) conversion;  
 3564 (iv) mutualization; ~~[or]~~  
 3565 (v) redomestication; or  
 3566 (vi) acquisition;  
 3567 ~~[(g)]~~ (f) approve the use of one or more reliable methods of valuation and rating for:  
 3568 (i) an association captive insurance company;  
 3569 (ii) a sponsored captive insurance company; or  
 3570 (iii) an industrial insured group;  
 3571 ~~[(h)]~~ (g) prohibit or limit an investment that threatens the solvency or liquidity of:  
 3572 (i) a pure captive insurance company; or  
 3573 (ii) an industrial insured captive insurance company;  
 3574 ~~[(i)]~~ (h) determine the financial reports a sponsored captive insurance company shall  
 3575 annually file with the commissioner;  
 3576 ~~[(j)]~~ (i) prescribe the required forms and reports under Section 31A-37-501; and  
 3577 ~~[(k)]~~ (j) establish one or more standards to ensure that:  
 3578 (i) one of the following is able to exercise control of the risk management function of a  
 3579 controlled unaffiliated business to be insured by a pure captive insurance company:  
 3580 (A) a parent; or  
 3581 (B) an affiliated company of a parent; or  
 3582 (ii) one of the following is able to exercise control of the risk management function of  
 3583 a controlled unaffiliated business to be insured by an industrial insured captive insurance  
 3584 company:  
 3585 (A) an industrial insured; or  
 3586 (B) an affiliated company of the industrial insured.  
 3587 (2) Notwithstanding Subsection (1)~~[(k)]~~(j), until the commissioner adopts the rules  
 3588 authorized under Subsection (1)~~[(k)]~~(j), the commissioner may by temporary order grant  
 3589 authority to insure risks to:  
 3590 (a) a pure captive insurance company; or  
 3591 (b) an industrial insured captive insurance company.  
 3592 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a  
 3593 captive insurance company as necessary to enable the commissioner to secure compliance with

3594 this chapter.

3595 Section 40. Section **31A-37-202** is amended to read:

3596 **31A-37-202. Permissive areas of insurance.**

3597 (1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of  
3598 incorporation, certificate of organization, or charter, a captive insurance company may apply to  
3599 the commissioner for a certificate of authority to do all insurance authorized by this title except  
3600 workers' compensation insurance.

3601 (b) Notwithstanding Subsection (1)(a):

3602 (i) a pure captive insurance company may not insure a risk other than a risk of:

3603 (A) its parent or affiliate;

3604 (B) a controlled unaffiliated business; or

3605 (C) a combination of Subsections (1)(b)(i)(A) and (B);

3606 (ii) an association captive insurance company may not insure a risk other than a risk of:

3607 (A) an affiliate;

3608 (B) a member organization of its association; and

3609 (C) an affiliate of a member organization of its association;

3610 (iii) an industrial insured captive insurance company may not insure a risk other than a  
3611 risk of:

3612 (A) an industrial insured that is part of the industrial insured group;

3613 (B) an affiliate of an industrial insured that is part of the industrial insured group; and

3614 (C) a controlled unaffiliated business of:

3615 (I) an industrial insured that is part of the industrial insured group; or

3616 (II) an affiliate of an industrial insured that is part of the industrial insured group;

3617 (iv) a special purpose captive insurance company may only insure a risk of its parent;

3618 (v) a captive insurance company may not provide:

3619 (A) personal motor vehicle insurance coverage;

3620 (B) homeowner's insurance coverage; or

3621 (C) a component of a coverage described in this Subsection (1)(b)(v); and

3622 (vi) a captive insurance company may not accept or cede reinsurance except as  
3623 provided in Section 31A-37-303.

3624 (c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a

3625 special purpose captive insurance company may provide:

3626 (i) insurance;

3627 (ii) reinsurance; or

3628 (iii) both insurance and reinsurance.

3629 (2) To conduct insurance business in this state a captive insurance company shall:

3630 (a) obtain from the commissioner a certificate of authority authorizing it to conduct

3631 insurance business in this state;

3632 (b) hold at least once each year in this state:

3633 (i) a board of directors meeting; ~~or~~

3634 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting; or

3635 (iii) in the case of a limited liability company, a meeting of the managers;

3636 (c) maintain in this state:

3637 (i) the principal place of business of the captive insurance company; or

3638 (ii) in the case of a branch captive insurance company, the principal place of business

3639 for the branch operations of the branch captive insurance company; and

3640 (d) except as provided in Subsection (3), appoint a resident registered agent to accept

3641 service of process and to otherwise act on behalf of the captive insurance company in this state.

3642 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company

3643 formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable

3644 diligence be found at the registered office of the captive insurance company, the commissioner

3645 is the agent of the captive insurance company upon whom process, notice, or demand may be

3646 served.

3647 (4) (a) Before receiving a certificate of authority, a captive insurance company:

3648 (i) formed as a corporation shall file with the commissioner:

3649 (A) a certified copy of:

3650 (I) articles of incorporation or the charter of the corporation; and

3651 (II) bylaws of the corporation;

3652 (B) a statement under oath of the president and secretary of the corporation showing

3653 the financial condition of the corporation; and

3654 (C) any other statement or document required by the commissioner under Section

3655 31A-37-106;

3656 (ii) formed as a reciprocal shall:  
3657 (A) file with the commissioner:  
3658 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;  
3659 (II) a certified copy of the subscribers' agreement of the reciprocal;  
3660 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the  
3661 financial condition of the reciprocal; and  
3662 (IV) any other statement or document required by the commissioner under Section  
3663 31A-37-106; and  
3664 (B) submit to the commissioner for approval a description of the:  
3665 (I) coverages;  
3666 (II) deductibles;  
3667 (III) coverage limits;  
3668 (IV) rates; and  
3669 (V) any other information the commissioner requires under Section 31A-37-106[-]; and  
3670 (iii) formed as a limited liability company shall file with the commissioner:  
3671 (A) a certified copy of the certificate of organization and the operating agreement of  
3672 the organization;  
3673 (B) a statement under oath of the president and secretary of the organization showing  
3674 the financial condition of the organization;  
3675 (C) evidence that the limited liability company is manager-managed; and  
3676 (D) any other statement or document required by the commissioner under Section  
3677 31A-37-106.  
3678 (b) (i) If there is a subsequent material change in an item in the description required  
3679 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal  
3680 captive insurance company shall submit to the commissioner for approval an appropriate  
3681 revision to the description required under Subsection (4)(a)(ii)(B).  
3682 (ii) A reciprocal captive insurance company that is required to submit a revision under  
3683 Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner  
3684 approves a revision of the description.  
3685 (iii) A reciprocal captive insurance company shall inform the commissioner of a  
3686 material change in a rate within 30 days of the adoption of the change.

3687 (c) In addition to the information required by Subsection (4)(a), an applicant captive  
3688 insurance company shall file with the commissioner evidence of:

3689 (i) the amount and liquidity of the assets of the applicant captive insurance company  
3690 relative to the risks to be assumed by the applicant captive insurance company;

3691 (ii) the adequacy of the expertise, experience, and character of the person who will  
3692 manage the applicant captive insurance company;

3693 (iii) the overall soundness of the plan of operation of the applicant captive insurance  
3694 company;

3695 (iv) the adequacy of the loss prevention programs for the following of the applicant  
3696 captive insurance company:

3697 (A) a parent;

3698 (B) a member organization; or

3699 (C) an industrial insured; and

3700 (v) any other factor the commissioner:

3701 (A) adopts by rule under Section 31A-37-106; and

3702 (B) considers relevant in ascertaining whether the applicant captive insurance company  
3703 will be able to meet the policy obligations of the applicant captive insurance company.

3704 (d) In addition to the information required by Subsections (4)(a), (b), and (c), an  
3705 applicant sponsored captive insurance company shall file with the commissioner:

3706 (i) a business plan at the level of detail required by the commissioner under Section  
3707 31A-37-106 demonstrating:

3708 (A) the manner in which the applicant sponsored captive insurance company will  
3709 account for the losses and expenses of each protected cell; and

3710 (B) the manner in which the applicant sponsored captive insurance company will report  
3711 to the commissioner the financial history, including losses and expenses, of each protected cell;

3712 (ii) a statement acknowledging that the applicant sponsored captive insurance company  
3713 will make all financial records of the applicant sponsored captive insurance company,  
3714 including records pertaining to a protected cell, available for inspection or examination by the  
3715 commissioner;

3716 (iii) a contract or sample contract between the applicant sponsored captive insurance  
3717 company and a participant; and



3718 (iv) evidence that expenses will be allocated to each protected cell in an equitable  
3719 manner.

3720 (5) (a) Information submitted pursuant to Subsection (4) is classified as a protected  
3721 record under Title 63G, Chapter 2, Government Records Access and Management Act.

3722 (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and  
3723 Management Act, the commissioner may disclose information submitted pursuant to  
3724 Subsection (4) to a public official having jurisdiction over the regulation of insurance in  
3725 another state if:

3726 (i) the public official receiving the information agrees in writing to maintain the  
3727 confidentiality of the information; and

3728 (ii) the laws of the state in which the public official serves require the information to be  
3729 confidential.

3730 (c) This Subsection (5) does not apply to information provided by an industrial insured  
3731 captive insurance company insuring the risks of an industrial insured group.

3732 (6) (a) A captive insurance company shall pay to the department the following  
3733 nonrefundable fees established by the department under Sections 31A-3-103, 31A-3-304, and  
3734 63J-1-504:

3735 (i) a fee for examining, investigating, and processing, by a department employee, of an  
3736 application for a certificate of authority made by a captive insurance company;

3737 (ii) a fee for obtaining a certificate of authority for the year the captive insurance  
3738 company is issued a certificate of authority by the department; and

3739 (iii) a certificate of authority renewal fee.

3740 (b) The commissioner may:

3741 (i) assign a department employee or retain legal, financial, and examination services  
3742 from outside the department to perform the services described in:

3743 (A) Subsection (6)(a); and

3744 (B) Section 31A-37-502; and

3745 (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the  
3746 applicant captive insurance company.

3747 (7) If the commissioner is satisfied that the documents and statements filed by the  
3748 applicant captive insurance company comply with this chapter, the commissioner may grant a

3749 certificate of authority authorizing the company to do insurance business in this state.

3750 (8) A certificate of authority granted under this section expires annually and shall be  
3751 renewed by July 1 of each year.

3752 Section 41. Section **31A-37-204** is amended to read:

3753 **31A-37-204. Paid-in capital -- Other capital.**

3754 (1) (a) The commissioner may not issue a certificate of authority to a company  
3755 described in Subsection (1)(c) unless the company possesses and thereafter maintains  
3756 unimpaired paid-in capital and unimpaired paid-in surplus of:

3757 (i) in the case of a pure captive insurance company, not less than [~~\$100,000~~] \$250,000;

3758 (ii) in the case of an association captive insurance company incorporated as a stock  
3759 insurer, not less than [~~\$400,000~~] \$750,000;

3760 (iii) in the case of an industrial insured captive insurance company incorporated as a  
3761 stock insurer, not less than [~~\$200,000~~] \$700,000;

3762 (iv) in the case of a sponsored captive insurance company, not less than [~~\$500,000~~]  
3763 \$1,000,000 of which a minimum of \$350,000 is provided by the sponsor; or

3764 (v) in the case of a special purpose captive insurance company, an amount determined  
3765 by the commissioner after giving due consideration to the company's business plan, feasibility  
3766 study, and pro-formas, including the nature of the risks to be insured.

3767 (b) The paid-in capital and surplus required under this Subsection (1) may be in the  
3768 form of:

3769 (i) (A) cash; or

3770 (B) cash equivalent; or

3771 (ii) an irrevocable letter of credit:

3772 (A) issued by:

3773 (I) a bank chartered by this state; or

3774 (II) a member bank of the Federal Reserve System; and

3775 (B) approved by the commissioner.

3776 (c) This Subsection (1) applies to:

3777 (i) a pure captive insurance company;

3778 (ii) a sponsored captive insurance company;

3779 (iii) a special purpose captive insurance company;

3780 (iv) an association captive insurance company incorporated as a stock insurer; or  
3781 (v) an industrial insured captive insurance company incorporated as a stock insurer.  
3782 (2) (a) The commissioner may, under Section 31A-37-106, prescribe additional capital  
3783 based on the type, volume, and nature of insurance business transacted.  
3784 (b) The capital prescribed by the commissioner under this Subsection (2) may be in the  
3785 form of:  
3786 (i) cash; or  
3787 (ii) an irrevocable letter of credit issued by:  
3788 (A) a bank chartered by this state; or  
3789 (B) a member bank of the Federal Reserve System.  
3790 (3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as  
3791 security for the payment of liabilities attributable to branch operations, shall, through its branch  
3792 operations, establish and maintain a trust fund:  
3793 (i) funded by an irrevocable letter of credit or other acceptable asset; and  
3794 (ii) in the United States for the benefit of:  
3795 (A) United States policyholders; and  
3796 (B) United States ceding insurers under:  
3797 (I) insurance policies issued; or  
3798 (II) reinsurance contracts issued or assumed.  
3799 (b) The amount of the security required under this Subsection (3) shall be no less than:  
3800 (i) the capital and surplus required by this chapter; and  
3801 (ii) the reserves on the insurance policies or reinsurance contracts, including:  
3802 (A) reserves for losses;  
3803 (B) allocated loss adjustment expenses;  
3804 (C) incurred but not reported losses; and  
3805 (D) unearned premiums with regard to business written through branch operations.  
3806 (c) Notwithstanding the other provisions of this Subsection (3), the commissioner may  
3807 permit a branch captive insurance company that is required to post security for loss reserves on  
3808 branch business by its reinsurer to reduce the funds in the trust account required by this section  
3809 by the same amount as the security posted if the security remains posted with the reinsurer.  
3810 (4) (a) A captive insurance company may not pay the following without the prior

3811 approval of the commissioner:

3812 (i) a dividend out of capital or surplus in excess of the limits under Section

3813 16-10a-640; or

3814 (ii) a distribution with respect to capital or surplus in excess of the limits under Section

3815 16-10a-640.

3816 (b) The commissioner shall condition approval of an ongoing plan for the payment of

3817 dividends or other distributions on the retention, at the time of each payment, of capital or

3818 surplus in excess of:

3819 (i) amounts specified by the commissioner under Section 31A-37-106; or

3820 (ii) determined in accordance with formulas approved by the commissioner under

3821 Section 31A-37-106.

3822 (5) Notwithstanding Subsection (1), a captive insurance company organized as a

3823 reciprocal insurer under this chapter may not be issued a certificate of authority unless the

3824 captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.

3825 (6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based

3826 upon the type, volume, and nature of the insurance business transacted.

3827 (b) The unimpaired paid-in surplus required under this Subsection (6) may be in the

3828 form of an irrevocable letter of credit issued by:

3829 (i) a bank chartered by this state; or

3830 (ii) a member bank of the Federal Reserve System.

3831 Section 42. Section **31A-37-301** is amended to read:

3832 **31A-37-301. Incorporation -- Organization.**

3833 (1) A pure captive insurance company or a sponsored captive insurance company shall

3834 be incorporated as a stock insurer with the capital of the pure captive insurance company or

3835 sponsored captive insurance company:

3836 (a) divided into shares; and

3837 (b) held by the stockholders of the pure captive insurance company or sponsored

3838 captive insurance company.

3839 (2) A pure captive insurance company or a sponsored captive insurance company

3840 formed as a limited liability company shall be organized as a members interest insurer with the

3841 capital of the pure captive insurance company or sponsored captive insurance company:

3842           (a) divided into interests; and

3843           (b) held by the members of the pure captive insurance company or sponsored captive  
3844 insurance company.

3845           ~~[(2)]~~ (3) An association captive insurance company or an industrial insured captive  
3846 insurance company may be:

3847           (a) incorporated as a stock insurer with the capital of the association captive insurance  
3848 company or industrial insured captive insurance company:

3849           (i) divided into shares; and

3850           (ii) held by the stockholders of the association captive insurance company or industrial  
3851 insured captive insurance company;

3852           (b) incorporated as a mutual insurer without capital stock, with a governing body  
3853 elected by the member organizations of the association captive insurance company or industrial  
3854 insured captive insurance company; or

3855           (c) organized as a reciprocal.

3856           ~~[(3)]~~ (4) A captive insurance company formed as a corporation may not have fewer  
3857 than three incorporators of whom ~~[not fewer than two shall be residents]~~ one shall be a resident  
3858 of this state.

3859           (5) A captive insurance company formed as a limited liability company may not have  
3860 fewer than three organizers of whom one shall be a resident of this state.

3861           ~~[(4)]~~ (6) (a) Before a captive insurance company formed as a corporation files the  
3862 corporation's articles of incorporation with the Division of Corporations and Commercial  
3863 Code, the incorporators shall obtain from the commissioner a certificate finding that the  
3864 establishment and maintenance of the proposed corporation will promote the general good of  
3865 the state.

3866           (b) In considering a request for a certificate under Subsection ~~[(4)]~~ (6)(a), the  
3867 commissioner shall consider:

3868           (i) the character, reputation, financial standing, and purposes of the incorporators;

3869           (ii) the character, reputation, financial responsibility, insurance experience, and  
3870 business qualifications of the officers and directors;

3871           (iii) any information in:

3872           (A) the application for a certificate of authority; or

3873 (B) the department's files; and

3874 (iv) other aspects that the commissioner considers advisable.

3875 (7) (a) Before a captive insurance company formed as a limited liability company files  
3876 the limited liability company's articles of organization with the Division of Corporations and  
3877 Commercial Code, the limited liability company shall obtain from the commissioner a  
3878 certificate finding that the establishment and maintenance of the proposed limited liability  
3879 company will promote the general good of the state.

3880 (b) In considering a request for a certificate under Subsection (7)(a) the commissioner  
3881 shall consider:

3882 (i) the character, reputation, financial standing, and purposes of the organizers;

3883 (ii) the character, reputation, financial responsibility, insurance experience, business  
3884 qualifications of the managers;

3885 (iii) any information in:

3886 (A) the application for a certificate of authority; or

3887 (B) the department's files; and

3888 (iv) other aspects that the commissioner considers advisable.

3889 [~~(5)~~] (8) (a) A captive insurance company formed as a corporation shall file with the  
3890 Division of Corporations and Commercial Code:

3891 (i) the captive insurance company's articles of incorporation;

3892 (ii) the certificate issued pursuant to Subsection [~~(4)~~] (6); and

3893 (iii) the fees required by the Division of Corporations and Commercial Code.

3894 (b) The Division of Corporations and Commercial Code shall file both the articles of  
3895 incorporation and the certificate described in Subsection [~~(4)~~] (6) for a captive insurance  
3896 company that complies with this section.

3897 (9) (a) A captive insurance company formed as a limited liability company shall file  
3898 with the Division of Corporations and Commercial Code:

3899 (i) the captive insurance company's certificate of organization;

3900 (ii) the certificate issued pursuant to Subsection (7); and

3901 (iii) the fees required by the Division of Corporations and Commercial Code.

3902 (b) The Division of Corporations and Commercial Code shall file both the certificate

3903 of organization and the certificate described in Subsection (7) for a captive insurance company

3904 that complies with this section.

3905           [(6)] (10) (a) The organizers of a captive insurance company formed as a reciprocal  
3906 insurer shall obtain from the commissioner a certificate finding that the establishment and  
3907 maintenance of the proposed association will promote the general good of the state.

3908           (b) In considering a request for a certificate under Subsection [(6)] (10)(a), the  
3909 commissioner shall consider:

3910           (i) the character, reputation, financial standing, and purposes of the incorporators;

3911           (ii) the character, reputation, financial responsibility, insurance experience, and  
3912 business qualifications of the officers and directors;

3913           (iii) any information in:

3914           (A) the application for a certificate of authority; or

3915           (B) the department's files; and

3916           (iv) other aspects that the commissioner considers advisable.

3917           [(7)] (11) (a) An alien captive insurance company that has received a certificate of  
3918 authority to act as a branch captive insurance company shall obtain from the commissioner a  
3919 certificate finding that:

3920           (i) the home state of the alien captive insurance company imposes statutory or  
3921 regulatory standards in a form acceptable to the commissioner on companies transacting the  
3922 business of insurance in that state; and

3923           (ii) after considering the character, reputation, financial responsibility, insurance  
3924 experience, and business qualifications of the officers and directors of the alien captive  
3925 insurance company, and other relevant information, the establishment and maintenance of the  
3926 branch operations will promote the general good of the state.

3927           (b) After the commissioner issues a certificate under Subsection [(7)] (11)(a) to an  
3928 alien captive insurance company, the alien captive insurance company may register to do  
3929 business in this state.

3930           [(8) ~~The capital stock of a captive insurance company incorporated as a stock insurer~~  
3931 ~~may not be issued at less than par value.~~]

3932           [(9)] (12) At least one of the members of the board of directors of a captive insurance  
3933 company formed as a corporation shall be a resident of this state.

3934           (13) At least one of the managers of a limited liability company shall be a resident of

3935 this state.

3936 ~~[(10)]~~ (14) At least one of the members of the subscribers' advisory committee of a  
3937 captive insurance company formed as a reciprocal insurer shall be a resident of this state.

3938 ~~[(11)]~~ (15) (a) A captive insurance company formed as a corporation under this chapter  
3939 has the privileges and is subject to the provisions of the general corporation law as well as the  
3940 applicable provisions contained in this chapter.

3941 (b) If a conflict exists between a provision of the general corporation law and a  
3942 provision of this chapter, this chapter shall control.

3943 (c) Except as provided in Subsection ~~[(11)]~~ (15)(d), the provisions of this title  
3944 pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in  
3945 determining the procedures to be followed by a captive insurance company in carrying out any  
3946 of the transactions described in those provisions.

3947 (d) Notwithstanding Subsection ~~[(11)]~~ (15)(c), the commissioner may waive or modify  
3948 the requirements for public notice and hearing in accordance with rules adopted under Section  
3949 31A-37-106.

3950 (e) If a notice of public hearing is required, but no one requests a hearing, the  
3951 commissioner may cancel the public hearing.

3952 (16) (a) A captive insurance company formed as a limited liability company under this  
3953 chapter has the privileges and is subject to Title 48, Chapter 2c, Utah Revised Limited Liability  
3954 Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Act, as  
3955 appropriate pursuant to Section 48-3a-1405, as well as the applicable provisions in this chapter.

3956 (b) If a conflict exists between a provision of the limited liability company law and a  
3957 provision of this chapter, this chapter controls.

3958 (c) The provisions of this title pertaining to a merger, consolidation, conversion,  
3959 mutualization, and redomestication apply in determining the procedures to be followed by a  
3960 captive insurance company in carrying out any of the transactions described in those  
3961 provisions.

3962 (d) Notwithstanding Subsection (16)(c), the commissioner may waive or modify the  
3963 requirements for public notice and hearing in accordance with rules adopted under Section  
3964 31A-37-106.

3965 (e) If a notice of public hearing is required, but no one requests a hearing, the



3966 commissioner may cancel the public hearing.

3967       ~~[(12)]~~ (17) (a) A captive insurance company formed as a reciprocal insurer under this  
3968 chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions  
3969 of this chapter.

3970       (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions  
3971 of this chapter with respect to a captive insurance company, this chapter shall control.

3972       (c) To the extent a reciprocal insurer is made subject to other provisions of this title  
3973 pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer  
3974 formed under this chapter unless the provisions are expressly made applicable to a captive  
3975 insurance company under this chapter.

3976       (d) In addition to the provisions of this Subsection ~~[(12)]~~ (17), a captive insurance  
3977 company organized as a reciprocal insurer that is an industrial insured group has the privileges  
3978 of Section 31A-4-114 in addition to applicable provisions of this title.

3979       ~~[(13)]~~ (18) (a) The articles of incorporation or bylaws of a captive insurance company  
3980 formed as a corporation may not authorize a quorum of a board of directors to consist of fewer  
3981 than one-third of the fixed or prescribed number of directors as provided in Section  
3982 16-10a-824.

3983       **(b) The certificate of organization of a captive insurance company formed as a limited**  
3984 **liability company may not authorize a quorum of a board of managers to consist of fewer than**  
3985 **one-third of the fixed or prescribed number of directors required in Section 16-10a-824.**

3986       Section 43. Section **31A-37-302** is amended to read:

3987       **31A-37-302. Investment requirements.**

3988       (1) (a) Except as provided in Subsection (1)(b), an association captive insurance  
3989 company, a sponsored captive insurance company, and an industrial insured group shall  
3990 comply with the investment requirements contained in this title.

3991       (b) Notwithstanding Subsection (1)(a) and any other provision of this title, the  
3992 commissioner may approve the use of alternative reliable methods of valuation and rating  
3993 under Section 31A-37-106 for:

- 3994       (i) an association captive insurance company;  
3995       (ii) a sponsored captive insurance company; or  
3996       (iii) an industrial insured group.

(2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or industrial insured captive insurance company is not subject to any restrictions on allowable investments contained in this title.

(b) Notwithstanding Subsection (2)(a), the commissioner may, under Section 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:

(i) a pure captive insurance company; or

(ii) an industrial insured captive insurance company.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may not make loans to:

(A) the parent company of the captive insurance company; or

(B) an affiliate of the captive insurance company.

(ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make loans to:

(A) the parent company of the pure captive insurance company; or

(B) an affiliate of the pure captive insurance company.

(b) A loan under Subsection (3)(a):

(i) may be made only on the prior written approval of the commissioner; and

(ii) shall be evidenced by a note in a form approved by the commissioner.

(c) A pure captive insurance company may not make a loan from~~[-(i)]~~ the paid-in capital required under Subsection 31A-37-204(1)~~[-or]~~.

~~[(ii) the free surplus required under Subsection 31A-37-205(1).]~~

Section 44. Section **31A-37-303** is amended to read:

**31A-37-303. Reinsurance.**

(1) A captive insurance company may provide reinsurance, as authorized in this title, on risks ceded ~~[by any other insurer]~~ for the benefit of a parent, affiliate, or controlled unaffiliated business.

(2) (a) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404.

(b) Unless the reinsurer is in compliance with Section 31A-17-404, a captive insurance company may not take credit for:

(i) reserves on risks ceded to a reinsurer; or

4028 (ii) portions of risks ceded to a reinsurer.

4029 Section 45. Section **31A-37-306** is amended to read:

4030 **31A-37-306. Conversion or merger.**

4031 (1) An association captive insurance company or industrial insured group formed as a  
4032 stock or mutual corporation may be:

4033 (a) converted to a reciprocal insurer in accordance with a plan and this section; or

4034 (b) merged with and into a reciprocal insurer in accordance with a plan and this  
4035 section.

4036 (2) An association captive insurance company or industrial group formed as a limited  
4037 liability company may be:

4038 (a) converted to a reciprocal insurer in accordance with a plan and this section; or

4039 (b) merged with and into a reciprocal insurer in accordance with a plan and this  
4040 section.

4041 ~~[(2)]~~ (3) A plan for a conversion or merger under this section:

4042 (a) shall be fair and equitable to:

4043 (i) the shareholders, in the case of a stock insurer; ~~[or]~~

4044 (ii) the policyholders, in the case of a mutual insurer; and

4045 (iii) the members, in the case of a limited liability company insurer; and

4046 (b) shall provide for the purchase of:

4047 (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the  
4048 same manner and subject to the same rights and conditions as are provided a dissenting  
4049 shareholder; or

4050 (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in  
4051 substantially the same manner and subject to the same rights and conditions as are provided a  
4052 dissenting policyholder.

4053 ~~[(3)]~~ (4) In the case of a conversion authorized under Subsection (1) or (2):

4054 (a) the conversion shall be accomplished under a reasonable plan and procedure that  
4055 are approved by the commissioner;

4056 (b) the commissioner may not approve the plan of conversion under this section unless  
4057 the plan:

4058 (i) satisfies Subsections ~~[(2)]~~ (3) and ~~[(6)]~~ (7);

(ii) provides for the conversion of existing stockholder ~~[or]~~, policyholder, or member interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder ~~[or]~~, policyholder, or member interests in the stock or mutual insurer or limited liability company; and

(iii) is approved:

(A) in the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; ~~[or]~~

(B) in the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or

(C) in the case of a limited liability company insurer, by a majority of the voting managers represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;

(c) the commissioner shall approve a plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with the standards under ~~[Subsection]~~ Section 31A-37-301~~(4)~~;

(d) if the commissioner approves a plan of conversion, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney-in-fact;

(e) upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and

(f) upon the effectiveness of the conversion:

(i) the corporate existence of the converting insurer shall cease; and

(ii) the resulting reciprocal insurer shall notify the Division of Corporations and Commercial Code of the conversion.

~~[(4)]~~ (5) A merger authorized under Subsection (1) or (2) shall be accomplished substantially in accordance with the procedures set forth in this title except that, solely for purposes of the merger:

(a) the plan or merger shall satisfy Subsection ~~[(2)]~~ (3);

(b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the

board of directors of a stock or mutual insurance company;

(c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company;

(d) if a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are the president and secretary of the committee;

(e) the commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with the standards under ~~[Subsection]~~ Section 31A-37-301~~(4)~~;

(f) notwithstanding ~~[Sections]~~ Section 31A-37-204 ~~[and 31A-37-205]~~, the commissioner may permit the formation, without capital and surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged to facilitate a transaction under this section, if there is no more than one authorized insurance company surviving the merger; and

(g) an alien insurer may be a party to a merger authorized under Subsection (1) or (2) if:

(i) the requirements for the merger between a domestic and a foreign insurer under Chapter 16, Insurance Holding Companies, are applied to the merger; and

(ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding Companies.

~~[(5)]~~ (6) If the commissioner approves the articles of merger under this section:

(a) the commissioner shall endorse the commissioner's approval on the articles; and

(b) the surviving insurer shall present the name to the Division of Corporations and Commercial Code.

~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(b), a conversion authorized under Subsection (1) shall provide for a hearing, of which notice has been given to the insurer, its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.

(b) Notwithstanding Subsection ~~[(6)]~~ (7)(a), the commissioner may waive or modify the requirements for the hearing.

(c) If a notice of hearing is required, but no hearing is requested, after notice has been

4121 given under Subsection [~~(6)~~] (7)(a), the commissioner may cancel the hearing.

4122 Section 46. Section **31A-37-401** is amended to read:

4123 **31A-37-401. Sponsored captive insurance companies -- Formation.**

4124 (1) One or more sponsors may form a sponsored captive insurance company under this  
4125 chapter.

4126 (2) A sponsored captive insurance company formed under this chapter may establish  
4127 and maintain a protected cell to insure risks of a participant if:

4128 (a) the shareholders of a sponsored captive insurance company are limited to:

4129 (i) the participants of the sponsored captive insurance company; and

4130 (ii) the sponsors of the sponsored captive insurance company;

4131 (b) each protected cell is accounted for separately on the books and records of the  
4132 sponsored cell captive insurance company to reflect:

4133 (i) the financial condition of the individual protected cell;

4134 (ii) the results of operations of [~~the~~] each individual protected cell;

4135 (iii) the net income or loss of [~~the~~] each individual protected cell;

4136 (iv) the dividends or other distributions to participants of [~~the~~] each individual  
4137 protected cell; and

4138 (v) other factors that may be:

4139 (A) provided in the participant contract; or

4140 (B) required by the commissioner;

4141 (c) the assets of a protected cell are not chargeable with liabilities arising out of any  
4142 other insurance business the sponsored captive insurance company may conduct;

4143 (d) a sale, exchange, or other transfer of assets is not made by the sponsored captive  
4144 insurance company between or among any of the protected cells of the sponsored captive  
4145 insurance company without the consent of the protected cells;

4146 (e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a  
4147 protected cell to a sponsor or participant without the commissioner's approval, which may not  
4148 be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or  
4149 impairment with respect to a protected cell;

4150 (f) a sponsored captive insurance company annually files with the commissioner  
4151 financial reports the commissioner requires under Section 31A-37-106, including accounting

4152 statements detailing the financial experience of each protected cell;

4153 (g) a sponsored captive insurance company notifies the commissioner in writing within  
4154 10 business days of a protected cell that is insolvent or otherwise unable to meet the claim or  
4155 expense obligations of the protected cell;

4156 (h) a participant contract does not take effect without the commissioner's prior written  
4157 approval; ~~and~~

4158 (i) the addition of each new protected cell and withdrawal of a participant of any  
4159 existing protected cell does not take effect without the commissioner's prior written  
4160 approval~~[-]; and~~

4161 (j) (i) a protected cell captive insurance company shall pay to the department the  
4162 following nonrefundable fees established by the department under Sections 31A-3-103,  
4163 31A-3-304, and 63J-1-504:

4164 (A) a fee for examining, investigating, and processing by a department employee of an  
4165 application for a certificate of authority made by a protected cell captive insurance company;

4166 (B) a fee for obtaining a certificate of authority for the year the protected cell captive  
4167 insurance company is issued a certificate of authority by the department; and

4168 (C) a certificate of authority renewal fee; and

4169 (ii) a protected cell may be created by the sponsor or the sponsor may create a pooling  
4170 insurance arrangement to provide for pooling of risks to allow for risk distribution upon written  
4171 approval from every protected cell under the sponsor and written approval of the  
4172 commissioner.

4173 Section 47. Section **31A-37-402** is amended to read:

4174 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**  
4175 **mandatory.**

4176 (1) A sponsor of a sponsored captive insurance company shall be:

4177 (a) an insurer authorized or approved under the laws of a state;

4178 (b) a reinsurer authorized or approved under the laws of a state;

4179 (c) a captive insurance company holding a certificate of authority under this chapter;

4180 (d) an insurance holding company that:

4181 (i) controls an insurer licensed pursuant to the laws of a state; and

4182 (ii) is subject to registration pursuant to the holding company system of laws of the

4183 state of domicile of the insurer described in Subsection (1)(d)(i); ~~or~~  
4184 (e) approved captive management firm in Utah or its affiliates; or  
4185 ~~(e)] (f)~~ another person approved by the commissioner after finding that the approval of  
4186 the person as a sponsor is not inconsistent with the purposes of this chapter.

4187 (2) (a) The business written by a sponsored captive insurance company with respect to  
4188 a protected cell shall be fronted by the sponsor insurance company through a controlled  
4189 unaffiliated contract or an insurer that is:

4190 (i) authorized or approved:

4191 (A) under the laws of a state; or

4192 (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an  
4193 insurance company licensed pursuant to the laws of a state;

4194 (ii) reinsured by a reinsurer authorized or approved by this state; or

4195 (iii) subject to Subsection (2)(b), secured by a trust fund:

4196 (A) in the United States;

4197 (B) for the benefit of policyholders and claimants; ~~and~~

4198 (C) funded by an irrevocable letter of credit or other asset acceptable to the  
4199 commissioner~~[-]; and~~

4200 (D) a fund held by the sponsor as provided in Subsection 31A-17-404(1).

4201 (b) (i) The amount of security provided by the trust fund described in Subsection  
4202 (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund,  
4203 including:

4204 (A) reserves for losses;

4205 (B) allocated loss adjustment expenses;

4206 (C) incurred but unreported losses; and

4207 (D) unearned premiums for business written through the participant's protected cell.

4208 (ii) The commissioner may require the sponsored captive insurance company to  
4209 increase the funding of a trust established pursuant to this Subsection (2).

4210 (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of  
4211 credit, the letter of credit shall be established, issued, or confirmed by a bank that is:

4212 (A) chartered in this state;

4213 (B) a member of the federal reserve system; or



(C) chartered by another state if that state-chartered bank is acceptable to the commissioner.

(iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a form and upon terms approved by the commissioner.

(3) A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.

Section 48. Section **31A-37-403** is amended to read:

**31A-37-403. Participants in sponsored captive insurance companies.**

(1) Any of the following may be a participant in a sponsored captive insurance company holding a certificate of authority under this chapter:

- (a) an association;
- (b) a corporation that is for profit or nonprofit;
- (c) a limited liability company;
- (d) a partnership;
- (e) a trust; or
- (f) any other business entity.

(2) A sponsor may be a participant in a sponsored captive insurance company.

(3) A participant need not be:

- (a) a shareholder of the sponsored captive insurance company; or
- (b) an affiliate of the sponsored captive insurance company.

(4) A participant shall insure only the participant's own risks through a sponsored captive insurance company unless otherwise approved by the commissioner.

Section 49. Section **31A-37-404** is amended to read:

**31A-37-404. Discounting of loss and loss adjustment expense reserves.**

(1) ~~[The following]~~ A sponsored captive insurance company may discount its loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves[.].

~~[(a) a sponsored captive insurance company; and]~~

~~[(b) a captive reinsurance company.]~~

(2) (a) ~~[The following]~~ A sponsored captive insurance company shall annually file with the department an actuarial opinion provided by an independent actuary on loss and loss

4245 adjustment expense reserves[?].

4246 [~~(i) a sponsored captive insurance company; and~~]

4247 [~~(ii) a captive reinsurance company.~~]

4248 (b) The independent actuary described in Subsection (2)(a) may not be an employee of:

4249 (i) the company filing the actuarial opinion; or

4250 (ii) an affiliate of the company filing the actuarial opinion.

4251 (3) The commissioner may disallow the discounting of reserves by [~~the following~~] a

4252 sponsored captive insurance company if the sponsored captive insurance company violates this

4253 title[?].

4254 [~~(a) a sponsored captive insurance company; or~~]

4255 [~~(b) a captive reinsurance company.~~]

4256 Section 50. Section **31A-37-501** is amended to read:

4257 **31A-37-501. Reports to commissioner.**

4258 (1) A captive insurance company is not required to make a report except those

4259 provided in this chapter.

4260 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the

4261 commissioner a report of the financial condition of the captive insurance company, verified by

4262 oath of two of the executive officers of the captive insurance company.

4263 (b) Except as provided in [~~Sections~~] Section 31A-37-204 [~~and 31A-37-205~~], a captive

4264 insurance company shall report:

4265 (i) using generally accepted accounting principles, except to the extent that the

4266 commissioner requires, approves, or accepts the use of a statutory accounting principle;

4267 (ii) using a useful or necessary modification or adaptation to an accounting principle

4268 that is required, approved, or accepted by the commissioner for the type of insurance and kind

4269 of insurer to be reported upon; and

4270 (iii) supplemental or additional information required by the commissioner.

4271 (c) Except as otherwise provided:

4272 (i) a licensed captive insurance company shall file the report required by Section

4273 31A-4-113; and

4274 (ii) an industrial insured group shall comply with Section 31A-4-113.5.

4275 (3) (a) A pure captive insurance company may make written application to file the

required report on a fiscal year end that is consistent with the fiscal year of the parent company of the pure captive insurance company.

(b) If the commissioner grants an alternative reporting date for a pure captive insurance company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal year end.

(4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall file with the commissioner a copy of the reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by two of the alien captive insurance company's executive officers.

(b) If the commissioner is satisfied that the annual report filed by the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the annual statement required for a captive insurance company under this section with respect to business written in the alien jurisdiction.

(c) A waiver by the commissioner under Subsection (4)(b):

(i) shall be in writing; and

(ii) is subject to public inspection.

(5) Before March 1, of each year, a sponsored cell captive insurance company shall submit to the commissioner a consolidated report of the financial condition of each individual protected cell, including a financial statement for each protected cell.

Section 51. Section **31A-37-502** is amended to read:

**31A-37-502. Examination.**

(1) (a) As provided in this section, the commissioner or a person appointed by the commissioner, shall examine each captive insurance company in each ~~three-year~~ five-year period.

(b) The ~~three-year~~ five-year period described in Subsection (1)(a) shall be determined on the basis of ~~three~~ five full annual accounting periods of operation.

(c) The examination is to be made as of:

(i) December 31 of the full three-year period; or

(ii) the last day of the month of an annual accounting period authorized for a captive

4307 insurance company under this section.

4308 (d) In addition to an examination required under this Subsection (1), the commissioner,  
4309 or a person appointed by the commissioner may examine a captive insurance company  
4310 whenever the commissioner determines it to be prudent.

4311 (2) During an examination under this section the commissioner, or a person appointed  
4312 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance  
4313 company to ascertain:

4314 (a) the financial condition of the captive insurance company;

4315 (b) the ability of the captive insurance company to fulfill the obligations of the captive  
4316 insurance company; and

4317 (c) whether the captive insurance company has complied with this chapter.

4318 ~~[(3) The commissioner upon application may enlarge the three-year period described in~~  
4319 ~~Subsection (1) to five years, if a captive insurance company is subject to a comprehensive~~  
4320 ~~annual audit during that period.]~~

4321 ~~[(a) of a scope satisfactory to the commissioner; and]~~

4322 ~~[(b) performed by independent auditors approved by the commissioner.]~~

4323 ~~[(4)]~~ (3) The commissioner may accept a comprehensive annual independent audit in  
4324 lieu of an examination:

4325 (a) of a scope satisfactory to the commissioner; and

4326 (b) performed by an independent auditor approved by the commissioner.

4327 ~~[(5)]~~ (4) A captive insurance company that is inspected and examined under this  
4328 section shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an  
4329 inspection and examination.

4330 Section 52. Section **31A-37-505** is amended to read:

4331 **31A-37-505. Suspension or revocation -- Grounds.**

4332 (1) The commissioner may suspend or revoke the certificate of authority of a captive  
4333 insurance company to conduct an insurance business in this state for:

4334 (a) insolvency or impairment of capital or surplus;

4335 (b) failure to meet the requirements of Section 31A-37-204 ~~[or 31A-37-205];~~

4336 (c) refusal or failure to submit:

4337 (i) an annual report required by Section 31A-37-501; or

- (ii) any other report or statement required by law or by lawful order of the commissioner;
- (d) failure to comply with the charter, bylaws, or other organizational document of the captive insurance company;
- (e) failure to submit to:
- (i) an examination under Section 31A-37-502; or
- (ii) any legal obligation relative to an examination under Section 31A-37-502;
- (f) refusal or failure to pay the cost of examination under Section 31A-37-502;
- (g) use of methods that, although not otherwise specifically prohibited by law, render:
- (i) the operation of the captive insurance company detrimental to the public or the policyholders of the captive insurance company; or
- (ii) the condition of the captive insurance company unsound with respect to the public or to the policyholders of the captive insurance company; or
- (h) failure otherwise to comply with laws of this state.

(2) Notwithstanding any other provision of this title, if the commissioner finds, upon examination, hearing, or other evidence, that a captive insurance company has committed any of the acts specified in Subsection (1), the commissioner may suspend or revoke the certificate of authority of the captive insurance company if the commissioner considers it in the best interest of the public and the policyholders of the captive insurance company to revoke the certificate of authority.

Section 53. Section **31A-43-301** is amended to read:

**31A-43-301. Stop-loss insurance coverage standards.**

(1) A small employer stop-loss insurance contract shall:

- (a) be issued to the small employer to provide insurance to the group health benefit plan, not the employees of the small employer;
- ~~[(b) use a standard application form developed by the commissioner by administrative rule;]~~
- ~~[(c)]~~ (b) have a contract term with guaranteed rates for at least 12 months, without adjustment, unless there is a change in the benefits provided under the small employer's health plan during the contract period;
- ~~[(d)]~~ (c) include both a specific attachment point and an aggregate attachment point in

4369 a contract;

4370 ~~[(e)]~~ (d) align stop-loss plan benefit limitations and exclusions with a small employer's

4371 health plan benefit limitations and exclusions, including any annual or lifetime limits in the

4372 employer's health plan;

4373 ~~[(f)]~~ (e) have an annual specific attachment point that is at least \$10,000;

4374 ~~[(g)]~~ (f) have an annual aggregate attachment point that may not be less than 85% of

4375 expected claims; and

4376 ~~[(h)]~~ (g) pay stop-loss claims:

4377 (i) incurred during the contract period; and

4378 (ii) paid within 12 months after the expiration date of the contract; and

4379 ~~[(i)]~~ (h) include provisions to cover incurred and unpaid stop-loss claims ~~[if a]~~ when

4380 the small [employer] employer's stop-loss plan terminates.

4381 (2) A small employer stop-loss contract shall not:

4382 (a) include lasering; and

4383 (b) pay claims directly to an individual employee, member, or participant.

4384 Section 54. **Repealer.**

4385 This bill repeals:

4386 Section **31A-37-205, Free surplus.**

4387 Section **31A-37-601, Incorporation of a captive reinsurance company.**

4388 Section **31A-37-602, Requirements of a captive reinsurance company.**

4389 Section **31A-37-603, Minimum capitalization or reserves for a captive reinsurance**

4390 **company.**

4391 Section **31A-37-604, Management of assets of a captive reinsurance company.**

4392 Section 55. **Effective date.**

4393 This bill takes effect on May 12, 2015, except that the amendments in this bill to

4394 Section 31A-3-304 (Effective 07/01/15) take effect on July 1, 2017.